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FILED
AUG 29 2017
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Nos. 16-476 & 16-477

IN THE
Supreme Court of the United States

GOVERNOR CHRISTOPHER J. CHRISTIE, *et al.*,
Petitioners,

v.

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, *et al.*,
Respondents.

NEW JERSEY THOROUGHBRED HORSEMEN'S ASSOCIATION, INC.,
Petitioner,

v.

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, *et al.*,
Respondents.

On Writs Of Certiorari To The United States Court Of Appeals For The Third Circuit

JOINT APPENDIX

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SEPT. 29, 2016 & OCT. 7, 2016
CERTIORARI GRANTED JUNE 27, 2017

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General Docket
Third Circuit Court of Appeals

Court of Appeals Docket #:	**Docketed:**
14-4546	12/05/2014
Nature of Suit:	**Termed:**
3890 Other Statutory Actions NCAA, et al v. Governor of New Jersey, et al	08/09/2016
Appeal From: United States District Court for the District of New Jersey	
Fee Status: Paid	

Case Type Information:

1) civil
2) private
3) Federal question

Originating Court Information:

District: 0312-3 : 3-14-cv-06450

Trial Judge: Michael A. Shipp, U.S. District Judge

Date Filed: 10/20/2014

Date Order/ Judgment:	**Date Order/ Judgment EOD:**	**Date NOA Filed:**
11/21/2014	11/21/2014	11/24/2014

Prior Cases:	**Lead**	**Member**	**Start**	**End**
None	14-4546 14-4568	14-4546 14-4569	12/08/ 2014	

Current Cases: Consolidated			12/08/2014	

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, an unincorporated association; NATIONAL BASKETBALL ASSOCIATION, a joint venture; NATIONAL FOOTBALL LEAGUE, an unincorporated association; NATIONAL HOCKEY LEAGUE, an unincorporated association; OFFICE OF THE COMMISSIONER OF BASEBALL, an unincorporated association doing business as MAJOR LEAGUE BASEBALL

v.

GOVERNOR OF THE STATE OF NEW JERSEY; DAVID L. REBUCK, Director of the New Jersey Division of Gaming Enforcement and Assistant Attorney General of the State of New Jersey; FRANK ZANZUCCKI, Executive Director of the New Jersey Racing Commission; NEW JERSEY THOROUGHBRED HORSEMEN'S ASSOCIATION, INC.; NEW JERSEY SPORTS & EXPOSITION AUTHORITY

STEPHEN M. SWEENEY, President of the New Jersey Senate; VINCENT PRIETO, Speaker of the New Jersey General Assembly (Intervenors in District Court)

Governor of New Jersey; David L. Rebuck; Frank Zanzuccki,

Appellants

12/05/2014	☐ 42 pg, 461.86 KB	CIVIL CASE DOCKETED. Notice filed by Appellants Governor of New Jersey, David L. Rebuck and Frank Zanzuccki in District Court No. 3-14-cv-06450. (TMM) * * *
12/08/2014	☐ 2 pg, 76.29 KB	ORDER (Clerk) The appeals at Nos. 14-4546, 14-4568, and 14-4569 are hereby consolidated for purposes of scheduling, joint appendix, and disposition, filed. (See Attached Order) [14-4546, 14-4568, 14-4569] (TMM) * * *
01/14/2015	☐ 64 pg, 278.84 KB	ECF FILER: ELECTRONIC BRIEF on behalf of Appellants Governor of New Jersey, David L. Rebuck and Frank Zanzuccki in 14-4546, filed. Certificate of Service dated 01/14/2015 by ECF.-- [Edited 01/16/2015 by MCW] (ADN)

01/14/2015	☐ 736 pg, 41.34 MB	ECF FILER: ELECTRONIC JOINT APPENDIX on behalf of Appellants Governor of New Jersey, David L. Rebuck and Frank Zanzuccki in 14-4546, Appellants Vincent Prieto and Stephen M. Sweeney in 14-4568, Appellant New Jersey Thoroughbred Horsemens Association Inc in 14-4569, filed. Certificate of service dated 01/14/2015 by ECF. [14-4546, 14-4568, 14-4569] (ADN) * * *
02/06/2015	☐ 23 pg, 108.42 KB	ECF FILER: ELECTRONIC AMICUS/INTERVENOR BRIEF on behalf of United States of America in support of Appellee/Respondent, filed. Certificate of Service dated 02/06/2015 by ECF. F.R.A.P. 29(a) Permission: YES. [14-4546, 14-4568, 14-4569] (PJP) * * *
02/13/2015	☐ 60 pg, 155.88 KB	ECF FILER: ELECTRONIC BRIEF on behalf of Appellees NBA, NHL, NCAA, National Football League and Office of the Commissioner of Baseball in 14-4546, 14-4568, 14-4569, filed. Certificate of Service dated 02/13/2015 by ECF. [14-4546, 14-4568, 14-4569] (PDC) * * *

02/27/2015	☐ 37 pg, 205.55 KB	ECF FILER: ELECTRONIC REPLY BRIEF on behalf of Appellants Governor of New Jersey, David L. Rebuck and Frank Zanzuccki, filed. Certificate of Service dated 02/27/2015 by ECF. (ADN) * * *
03/17/2015	☐	ARGUED on Tuesday, March 17, 2015. Panel: RENDELL, FUENTES and BARRY, Circuit Judges. Paul D. Clement arguing for Appellees NBA, NHL, National Collegiate Athletic Association, National Football League; Michael R. Griffinger arguing for Appellant Vincent Prieto, Stephen Sweeney; Theodore B. Olson arguing for Appellant Governor of New Jersey, David L. Rebuck, Frank Zanzuccki; Peter J. Phipps arguing for Amicus Appellee United States of America; Ronald J. Riccio arguing for Appellee New Jersey Thoroughbred Horsemens Association Inc. [14-4546, 14-4568, 14-4569] (CMH) * * *
03/30/2015	☐ 72 pg, 169.62 KB	ECF FILER: Transcript of oral argument on 03/30/2015 prepared at the direction of the Court. [14-4546, 14-4568, 14-4569] (AEJ) * * *

08/25/2015	☐ 31 pg, 424.15 KB	PRECEDENTIAL OPINION Coram: RENDELL, FUENTES and BARRY, Circuit Judges. Total Pages: 31. Judge: RENDELL Authoring, Judge: FUENTES Dissenting. [14-4546, 14-4568, 14-4569] (VACATED PER COURT'S ORDER OF 10/14/15)--[Edited 10/14/2015 by TMM] (TMM)
08/25/2015	☐ 7 pg, 112.81 KB	JUDGMENT, ORDERED and ADJUDGED by this Court that the order of the District Court dated November 21, 2014 is hereby Affirmed. [14-4546, 14-4568, 14-4569] (VACATED PER COURT'S ORDER OF 10/14/15)--[Edited 10/14/2015 by TMM] (TMM)
09/08/2015	☐ 56 pg, 767.46 KB	ECF FILER: Petition filed by Appellants Governor of New Jersey, David L. Rebuck and Frank Zanzuccki for Rehearing before original panel and the court en banc. Certificate of Service dated 09/08/2015. (AEJ)

09/15/2015	☐ 2 pg, 78.91 KB	ORDER (MCKEE, Chief Judge, AMBRO, FUENTES, SMITH, FISHER, JORDAN, HARDIMAN, GREENAWAY, JR., VANASKIE, KRAUSE, RENDELL and BARRY, Circuit Judges) The Appellees are directed to file an answer to the petitions for rehearing within 14 days from the date of this order. The answer shall not exceed 15 pages, filed. Rendell, Authoring Judge. [14-4546, 14-4568, 14-4569]--[Edited 10/06/2015 by TMM] (TMM)
09/29/2015	☐ 20 pg, 69.73 KB	ECF FILER: Response filed by Appellees NBA, NHL, NCAA, National Football League and Office of the Commissioner of Baseball in 14-4546, 14-4568, 14-4569 to Petition En Banc Rehearing, Petition for Panel Rehearing. Certificate of Service dated 09/29/2015. [14-4546, 14-4568, 14-4569] (PDC)
10/05/2015	☐ 25 pg, 367.22 KB	ECF FILER: JOINT Motion filed by Appellants Governor of New Jersey, David L. Rebuck and Frank Zanzuccki for Leave to File Reply in Support of Petition for Rehearing with attached Reply. Certificate of Service dated 10/05/2015. [14-4546, 14-4568, 14-4569]--[Edited 10/07/2015 by TMM] (JSJ)

10/14/2015	☐ 2 pg, 82.41 KB	ORDER (AMBRO, FUENTES, SMITH, FISHER, JORDAN, HARDIMAN, GREENAWAY, JR., VANASKIE, KRAUSE, RENDELL and BARRY, Circuit Judges) Joint Motion by Appellants for Leave to File Reply in Support of Petition for Rehearing is granted, filed. Rendell, Authoring Judge. [14-4546, 14-4568, 14-4569]--[Edited 10/14/2015 by TMM] (TMM)

10/14/2015	☐ 2 pg, 11.03 KB	ORDER filed (Coram: AMBRO, FUENTES, SMITH, FISHER, JORDAN, HARDIMAN, GREENAWAY JR., VANASKIE, KRAUSE, RENDELL* and BARRY*, Circuit Judges) A majority of the active judges having voted for rehearing en banc, it is ordered that the petitions for rehearing are GRANTED. The Clerk of the Court shall list the case for rehearing en ban at the convenience of the Court. The opinion and judgment entered August 25, 2015 are hereby vacated. Authoring Judge: Rendell. *The Honorable Marjorie O. Rendell and Honorable Maryanne Trump Barry will participate as members of the en banc court pursuant to 3d. Cir. I.O.P. 9.6.4. [14-4546, 14-4568, 14-4569] (TMM) * * *

02/12/2016	☐ 2 pg, 80.65 KB	ORDER (AMBRO, FUENTES, SMITH, FISHER, JORDAN, HARDIMAN, GREENAWAY JR., VANASKIE, KRAUSE, RESTREPO, RENDELL and BARRY, Circuit Judges) granting Motion filed by Amicus Appellee USA for leave to participate in oral argument. The United States shall have the 10 minutes of argument time, filed. Thomas L. Ambro, Authoring Judge. [14-4546, 14-4568, 14-4569] (CMH)

02/17/ 2016	ARGUED on Wednesday, February 17, 2016. Panel: AMBRO, FUENTES, *SMITH, FISHER, JORDAN, HARDIMAN, GREENAWAY JR., VANASKIE, KRAUSE, RESTREPO, RENDELL, **BARRY, Circuit Judges. Paul D. Clement arguing for Appellees NBA, NHL, National Collegiate Athletic Association, National Football League; Paul J. Fishman arguing for Amicus Appellee United States of America; Theodore B. Olson arguing for Appellant Governor of New Jersey, David L. Rebuck; Ronald J. Riccio arguing for Appellant/Appellee New Jersey Thoroughbred Horsemens Association Inc, Circuit Judges. [14-4546, 14-4568, 14-4569] *Honorable D. Brooks Smith participated by video conference. **Honorable Maryanne T. Barry participated via audio conference. (CMH)

08/09/2016	☐ 51 pg, 597.2 KB	PRECEDENTIAL OPINION Coram: AMBRO, SMITH, FISHER, JORDAN, HARDIMAN, GREENAWAY JR., VANASKIE, KRAUSE, RESTREPO, RENDELL and BARRY, Circuit Judges. Total Pages: 51. Judge: RENDELL Authoring, Judge: FUENTES Dissenting, Judge: VANASKIE Dissenting. [14-4546, 14-4568, 14-4569] (TMM)
08/09/2016	☐ 7 pg, 122.78 KB	JUDGMENT, ORDERED and ADJUDGED by this Court that the order of the District Court dated November 21, 2014 is hereby Affirmed. [14-4546, 14-4568, 14-4569] (TMM)
08/11/2016	☐ 2 pg, 17.17 KB	ORDER AMENDING OPINION (Clerk) The opinion issued on August 9, 2016 is hereby amended as the Honorable L. Felipe Restepo joined in the dissenting opinion filed by the Honorable Julio M. Fuentes. A revised opinion will be entered on the docket reflecting the change. This amendment does not affect the original filing date of the judgment. [14-4546, 14-4568, 14-4569] (TMM)

08/11/2016	☐ 51 pg, 268.7 KB	AMENDED PRECEDENTIAL OPINION Coram: AMBRO, SMITH, FISHER, JORDAN, HARDIMAN, GREENAWAY JR., VANASKIE, KRAUSE, RESTREPO, RENDELL and BARRY, Circuit Judges. Total Pages: 51. Judge: RENDELL Authoring, Judge: FUENTES joined by RESTREPO Dissenting, Judge: VANASKIE Dissenting. [14-4546, 14-4568, 14-4569] (TMM)
08/31/2016	☐ 55 pg, 410.27 KB	MANDATE ISSUED, filed. [14-4546, 14-4568, 14-4569] (TMM) * * *
06/27/2017	☐	NOTICE of U.S. Supreme Court disposition at No. 16-476. Petition for Writ of Ceriorari filed by Governor of New Jersey granted on 06/27/2017. The cases are consolidated and a total of one hour is allotted for oral argument. [14-4546, 14-4568, 14-4569] --[Edited 06/27/2017 by AWI] (AWI)

06/27/ 2017	☐	NOTICE of U.S. Supreme Court disposition at No. 16-477. Petition for Writ of Ceriorari filed by New Jersey Thoroughbred Horsemens Association Inc granted on 06/27/2017. The cases are consolidated and a total of one hour is allotted for oral argument. [14-4546, 14-4568, 14-4569] (AWI)

U.S. District Court
District of New Jersey [LIVE] (Trenton)
CIVIL DOCKET FOR
CASE #: 3:14-cv-06450-MAS-LHG

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION et al v. CHRISTIE et al

Assigned to:
Judge Michael A. Shipp

Referred to: Magistrate Judge Lois H. Goodman

Case in other court:
3rd circuit, 14-04546
3rd circuit, 14-04568
3rd circuit, 14-04569

Cause:
28:1331 Federal Question-Injunctive & Declaratory Relief

Date Filed: 10/20/2014

Date Terminated: 01/15/2016

Jury Demand:
None

Nature of Suit:
890 Other Statutory Actions

Jurisdiction: Federal Question

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an unincorporated association

represented by

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UNITED STATES OF AMERICA

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Date Filed	#	Docket Text
10/20/2014	1	COMPLAINT against CHRISTOPHER J. CHRISTIE, NEW JERSEY SPORTS AND EXPOSITION AUTHORITY, NEW JERSEY THOROUGHBRED HORSEMEN'S ASSOCIATION, INC., DAVID L. REBUCK, and FRANK ZANZUCCKI (Filing and Admin fee $ 400 receipt number 5997764), filed by NATIONAL HOCKEY LEAGUE, NATIONAL BASKETBALL ASSOCIATION, OFFICE OF THE COMMISSIONER OF BASEBALL, NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, and NATIONAL FOOTBALL LEAGUE. (Attachments: # 1 Civil Cover Sheet)(mak)(Entered: 10/20/2014) * * *
10/21/2014	12	MOTION for Order to Show Cause *with Temporary Restraints* by NATIONAL BASKETBALL ASSOCIATION, NATIONAL COLLEGIATE ATHLETIC

		ASSOCIATION, NATIONAL FOOTBALL LEAGUE, NATIONAL HOCKEY LEAGUE, OFFICE OF THE COMMISSIONER OF BASEBALL. (Attachments: # 1 Cover Letter Filing by Hand, # 2 Brief in Support of Applications for a Temporary Restraining Order, Preliminary Injunction and to Enforce the Permanent Injunction Issued in 12-CV-04947, # 3 Declaration of Anthony J. Dreyer with Exhibits 1 through 20 attached, # 4 Exhibit 1, # 5 Exhibit 2, # 6 Exhibit 3, # 7 Exhibit 4, # 8 Exhibit 5, # 9 Exhibit 6, # 10 Exhibit 7, # 11 Exhibit 8, # 12 Exhibit 9, # 13 Exhibit 10, # 14 Exhibit 11, # 15 Exhibit 12, # 16 Exhibit 13, # 17 Exhibit 14, # 18 Exhibit 15, # 19 Exhibit 16, # 20 Exhibit 17, # 21 Exhibit 18, # 22 Exhibit 19, # 23 Exhibit 20, # 24 Text of Proposed Order for a Preliminary Injunction)(HERNANDEZ, RICHARD) (Entered: 10/21/2014) * * *
10/22/2014	19	BRIEF in Opposition filed by NEW JERSEY SPORTS AND EXPOSITION AUTHORITY re 12 MOTION for Order to Show Cause *with Temporary Restraints* (Attachments: # 1 Declaration of Ralph J. Marra, # 2 Certification Pursuant to Local Civil Rule 11.2, # 3 Certificate of Service)(TORCICOLLO, PETER) (Entered: 10/22/2014)

		* * *
10/22/2014	21	BRIEF in Opposition filed by NEW JERSEY THOROUGHBRED HORSEMEN'S ASSOCIATION, INC. re 12 MOTION for Order to Show Cause *with Temporary Restraints* (Attachments: # 1 Certification of Ronald J. Riccio, Esq., # 2 Exhibit A to R. Riccio Certification, # 3 Exhibit B to R. Riccio Certification, # 4 Exhibit C to R. Riccio Certification, # 5 Exhibit D to R. Riccio Certification, # 6 Exhibit E to R. Riccio Certification, # 7 Exhibit F to R. Riccio Certification, # 8 Exhibit G to R. Riccio Certification, # 9 Certification of Michael Musto with Exhibits A and B, # 10 Certification of Robert J. Kulina, # 11 Certification of Dennis A. Drazin with Exhibit A, # 12 Certificate of Service) (RICCIO, RONALD) (Entered: 10/22/2014)
10/22/2014	22	MEMORANDUM in Opposition filed by CHRISTOPHER J. CHRISTIE, DAVID L. REBUCK, FRANK ZANZUCCKI re 12 MOTION for Order to Show Cause *with Temporary Restraints* (Attachments: # 1 Certificate of Service)(JACOBSON, JEFFREY) (Entered: 10/22/2014) * * *
10/23/2014	26	REPLY BRIEF to Opposition to Motion

		filed by NATIONAL BASKETBALL ASSOCIATION, NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, NATIONAL FOOTBALL LEAGUE, NATIONAL HOCKEY LEAGUE, OFFICE OF THE COMMISSIONER OF BASEBALL re 12 MOTION for Order to Show Cause with Temporary Restraints (Attachments: # 1 Cover Letter)(O'SHAUGHNESSY, WILLIAM) (Entered: 10/23/2014) * * *
10/24/2014	31	Minute Entry for proceedings held before Judge Michael A. Shipp: Motion Hearing via telephone held on 10/24/2014 re 12 MOTION for Order to Show Cause *with Temporary Restraints* filed by NATIONAL BASKETBALL ASSOCIATION, NATIONAL FOOTBALL LEAGUE, NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, NATIONAL HOCKEY LEAGUE, OFFICE OF THE COMMISSIONER OF BASEBALL. Decision on Plaintiffs' motion read into the record. Plaintiffs' motion is granted. Order to be entered. (Court Reporter-CATHY FORD.) (NR) (Entered: 10/24/2014)
10/24/2014	32	ORDER granting 12 Motion for Order to Show Cause. Signed by Judge Michael A. Shipp on 10/24/14. (NR) (Entered: 10/24/2014)

		* * *
10/24/2014	34	TEXT ORDER: The Court has provided an addendum to its oral decision, entered on the record on October 24, 2014, which will be reflected in the transcript of the decision. The scope of the temporary restraints is set forth in the Court's Order (Doc. No. 32). So ordered by Judge Michael A. Shipp on 10/24/2014. (FH) (Entered: 10/24/2014)
10/27/2014	35	Letter from Anthony J. Dreyer re 33 Scheduling Order. (DREYER, ANTHONY) (Entered: 10/27/2014)
10/27/2014	36	Letter from Ronald J. Riccio, Esq. re 32 Order on Motion for Order to Show Cause. (Attachments: # 1 Text of Proposed Order)(RICCIO, RONALD) (Entered: 10/27/2014)
10/27/2014	37	Letter from Anthony J. Dreyer re 36 Letter. (DREYER, ANTHONY) (Entered: 10/27/2014)
10/28/2014	38	SCHEDULING ORDER: Defendants may file additional briefing in opposition to Plaintiffs' pending application for a preliminary injunction by 11/3/2014; Plaintiffs may file a reply brief by 11/7/2014; Oral Argument is set for 11/20/2014 at 10:00 AM; that the 14-day limitation period on the TRO is extended for an additional 14 days; that the NJTHA's request for an increase in security due to the 14 day extension is

		granted; Plaintiffs must post an additional $1,700,000 bond by 11/10/2014. Signed by Judge Michael A. Shipp on 10/27/2014. (jjc) (Entered: 10/28/2014) * * *
10/30/2014	41	Transcript of Motion Hearing held on 10/24/2014, before Judge MICHAEL A. SHIPP. Court Reporter/Transcriber Cathy Ford (609-367-2777). **NOTICE REGARDING REDACTION OF TRANSCRIPTS:** The parties have seven (7) calendar days to file with the Court a Notice of Intent to Request Redaction of this Transcript. Redaction Request due 11/20/2014. Redacted Transcript Deadline set for 12/1/2014. Release of Transcript Restriction set for 1/28/2015. (eaj) (Entered: 10/30/2014)
11/03/2014	42	BRIEF *in Opposition to Plaintiffs' Application for a Preliminary Injunction* (Attachments: # 1 Certification of Ronald J. Riccio, Esq. with Exhibit A, # 2 Certificate of Service)(RICCIO, RONALD) (Entered: 11/03/2014)
11/03/2014	43	BRIEF *in Opposition to Plaintiffs' Application for a Preliminary Injunction* (Attachments: # 1 Declaration of Ralph J. Marra, # 2 Exhibit A, # 3 Certificate of Service)(TORCICOLLO, PETER) (Entered: 11/03/2014)

11/03/2014	44	BRIEF *in Opposition to Plaintiffs' Motion for a Preliminary Injunction* (Attachments: # 1 Declaration David Rebuck, # 2 Declaration Frank Zanzuccki, # 3 Declaration Matthew Levinson, # 4 Certificate of Service)(JACOBSON, JEFFREY) (Entered: 11/03/2014) * * *
11/06/2014	46	Letter from Thomas R. Valen, Esq. to Honorable Michael A. Shipp, U.S.D.J., requesting leave to intervene on behalf of Presiding Officers of the New Jersey Legislature. (Attachments: # 1 Text of Proposed Order, # 2 Certificate of Service)(VALEN, THOMAS) (Entered: 11/06/2014) * * *
11/07/2014	48	ORDER that The Legislature Defendants' application for leave to intervene is hereby GRANTED; that The Legislature Defendants shall be entered by the Clerk of the Court as Defendants. Signed by Judge Michael A. Shipp on 11/7/2014. (jjc) (Entered: 11/07/2014)
11/07/2014	49	BRIEF *(Reply) in Further Support of Plaintiffs' Motion for a Preliminary Injunction* (Attachments: # 1 Declaration (Supplemental) of Anthony J. Dreyer, # 2 Exhibit 1, # 3 Exhibit 2, # 4 Exhibit 3, # 5 Exhibit 4, # 6 Exhibit 5, # 7 Exhibit 6, # 8 Exhibit 7)(O'SHAUGHNESSY, WILLIAM) (Entered:

		11/07/2014)
11/10/2014	50	TEXT ORDER: All parties are on notice that the Court intends to consolidate the application for a preliminary injunction with a decision on the merits. The parties shall e-file correspondence with the Court by Monday, November 17, 2014, if there are any additional considerations or issues in connection with such consolidation. SO ORDERED by Judge Michael A. Shipp on 11/10/14. (FH) (Entered: 11/10/2014)
11/17/2014	51	Letter from Plaintiffs re 50 Order,. (HERNANDEZ, RICHARD) (Entered: 11/17/2014)
11/17/2014	52	Letter from Jeffrey Jacobson re 50 Order,. (Attachments: # 1 Statement of Undisputed Material Facts)(JACOBSON, JEFFREY) (Entered: 11/17/2014)
11/17/2014	53	Letter from Ronald J. Riccio re 50 Order,. (Attachments: # 1 Certification of Ronald J. Riccio, # 2 Exhibit A to Riccio Cert., # 3 Exhibit B to Riccio Cert., # 4 Exhibit C to Riccio Cert., # 5 Exhibit D to Riccio Cert., # 6 Exhibit E to Riccio Cert.)(RICCIO, RONALD) (Entered: 11/17/2014)
11/17/2014	54	Letter from Thomas R. Valen, Esq. to Honorable Michael A. Shipp re: docket entry 50. (VALEN, THOMAS) (Entered: 11/17/2014)

		* * *
11/19/2014	56	TEXT ORDER - After careful consideration of the correspondence submitted to the Court by all parties, and in clarification of the Court's November 10, 2014 Text Oder (Doc. No. 50), the Court shall consolidate Plaintiff's application for a preliminary injunction with a decision on the merits through summary judgment. ORDERED by Judge Michael A. Shipp on 11/19/14. (NR) (Entered: 11/19/2014)
11/19/2014	57	STATEMENT *OF INTEREST* by UNITED STATES OF AMERICA. (Attachments: # 1 Certificate of Service)(PHIPPS, PETER) (Entered: 11/19/2014)
11/19/2014	58	STATEMENT *Plaintiffs' Response to State Defendants' Statement of Material Facts and Counterstatement of Undisputed Material Facts* by NATIONAL BASKETBALL ASSOCIATION, NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, NATIONAL FOOTBALL LEAGUE, NATIONAL HOCKEY LEAGUE, OFFICE OF THE COMMISSIONER OF BASEBALL. (HERNANDEZ, RICHARD) (Entered: 11/19/2014) * * *
11/19/2014	60	STATEMENT *OF UNDISPUTED MATERIAL FACTS PURSUANT TO LOCAL RULE 56.1* by NEW JERSEY

		SPORTS AND EXPOSITION AUTHORITY. (TORCICOLLO, PETER) (Entered: 11/19/2014)
11/20/2014	61	Letter from Ronald J. Riccio, Esq. re 56 Order,. (RICCIO, RONALD) (Entered: 11/20/2014)
11/20/2014	62	RESPONSE re 59 Response (NOT Motion). (Attachments: # 1 Certificate of Service)(JACOBSON, JEFFREY) (Entered: 11/20/2014)
11/20/2014	63	Minute Entry for proceedings held before Judge Michael A. Shipp: Hearing on Plaintiff's Application for Preliminary Injunction held on 11/20/2014 re 12 MOTION for Order to Show Cause *with Temporary Restraints* filed by NATIONAL BASKETBALL ASSOCIATION, NATIONAL FOOTBALL LEAGUE, NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, NATIONAL HOCKEY LEAGUE, OFFICE OF THE COMMISSIONEROF BASEBALL. Decision Reserved. Order to be entered. (Court Reporter- CATHY FORD.) (NR) Modified on 12/3/2014 (NR). (Main Document 63 replaced on 12/3/2014) (NR). (Entered: 11/21/2014)
11/21/2014	64	OPINION. Signed by Judge Michael A. Shipp on 11/21/2014. (FH) (Entered: 11/21/2014)
11/21/2014	65	ORDER. Signed by Judge Michael A. Shipp on 11/21/2014. (FH) (Entered: 11/21/2014)

11/21/2014	66	NOTICE OF APPEAL as to 64 Opinion, 65 Order by CHR STOPHER J. CHRISTIE, DAVID L. REBUCK, FRANK ZANZUCCKI. Filing fee $ 505, receipt number 0312-6065031. The Clerk's Office hereby certifies the record and the docket sheet available through ECF to be the certified list in lieu of the record and/or the certified copy of the docket entries. (Attachments: # 1 Certificate of Service)(JACOBSON, JEFFREY) (Entered: 11/21/2014)
11/24/2014	67	NOTICE OF APPEAL as to 64 Opinion, 65 Order by VINCENT PRIETO, STEPHEN M. SWEENEY. Filing fee $ 505, receipt number 0312-6066811. The Clerk's Office hereby certifies the record and the docket sheet available through ECF to be the certified list in lieu of the record and/or the certified copy of the docket entries. (Attachments: # 1 Certificate of Service)(GRIFFINGER, MICHAEL) (Entered: 11/24/2014)
11/24/2014	68	NOTICE OF APPEAL as to 64 Opinion, 65 Order by NEW JERSEY THOROUGHBRED HORSEMEN'S ASSOCIATION, INC.. Filing fee $ 505, receipt number 0312-6066928. The Clerk's Office hereby certifies the record and the docket sheet available through ECF to be the certified list in lieu of the record and/or the certified copy of the docket entries. (Attachments: # 1 Certificate of Service)(RICCIO, RONALD) (Entered:

		11/24/2014)
11/24/2014	69	Letter from Anthony J. Dreyer re 47 Bond,. (DREYER, ANTHONY) (Entered: 11/24/2014)
11/25/2014	70	Letter from Ronald J. Riccio re 69 Letter. (RICCIO, RONALD) (Entered: 11/25/2014) * * *
12/01/2014	71	Transcript of Motion for Preliminary Injunction held on 11/20/2014, before Judge MICHAEL A. SHIPP. Court Reporter/Transcriber Cathy Ford (609-367-2777). **NOTICE REGARDING REDACTION OF TRANSCRIPTS:** The parties have seven (7) calendar days to file with the Court a Notice of Intent to Request Redaction of this Transcript. Redaction Request due 12/22/2014. Redacted Transcript Deadline set for 1/5/2015. Release of Transcript Restriction set for 3/2/2015. (eaj) (Entered: 12/01/2014)
12/02/2014	72	TEXT ORDER - After careful consideration of the parties' correspondence (ECF Nos. 69, 70), Plaintiffs' request that the Court order the bond discharged is DENIED. So Ordered by Judge Michael A. Shipp on 12/2/14. (NR) (Entered: 12/02/2014) * * *

08/25 /2015	76	USCA JUDGMENT ORDERED and ADJUDGED by this Court that the order of the District Court dated November 21, 2014 is hereby Affirmed. Mandate will follow. (Entered: 08/25/2015)
01/15 /2016		***Civil Case Terminated, per chambers. (dm) (Entered: 01/15/2016)
08/31 /2016	77	MANDATE of USCA issued. (Attachments: # 1 mandate letter, # 2 opinion) (Entered: 08/31/2016)
09/01 /2016		Pursuant to the 77 MANDATE of the USCA, the Order of the USDC entered 11/21/2014 is AFFIRMED. (mmh) (Entered: 09/01/2016)

* * *

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NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, an unincorporated association, NATIONAL BASKETBALL ASSOCIATION, a joint venture, NATIONAL FOOTBALL LEAGUE, an unincorporated association, NATIONAL HOCKEY LEAGUE, an unincorporated association, and OFFICE OF THE COMMISSIONER OF BASEBALL, an unincorporated association doing business as Major League Baseball, Plaintiffs,	**UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY** Civil Action No. **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

v.

CHRISTOPHER J. CHRISTIE, Governor of the State of New Jersey, DAVID L. REBUCK, Director of the New Jersey Division of Gaming Enforcement and Assistant Attorney General of the State of New Jersey, and FRANK ZANZUCCKI, Executive Director of the New Jersey Racing Commission, NEW JERSEY THOROUGHBRED HORSEMEN'S ASSOCIATION, INC., and NEW JERSEY SPORTS AND EXPOSITION AUTHORITY,

Defendants.

Plaintiffs National Collegiate Athletic Association (the "NCAA"), National Basketball Association (the "NBA"), National Football League (the "NFL"), National Hockey League (the "NHL"), and Office of the Commissioner of Baseball doing business as Major League Baseball ("MLB"), by and through their undersigned counsel for their complaint allege as follows:

Nature of the Action

1. This action challenges New Jersey's latest effort—in defiance of this Court's February 28, 2013 Order and in clear and flagrant violation of federal law—to accomplish what it unsuccessfully attempted to do nearly three years ago: sponsor, operate, advertise, promote, license, or authorize gambling on amateur and professional sports at state-licensed casinos and horse racetracks. Because this effort is no more lawful than New Jersey's past ones, it, too, should be enjoined.

2. The federal Professional and Amateur Sports Protection Act, 28 U.S.C. § 3701, *et seq.* ("PASPA"), with limited exceptions not applicable here, makes it unlawful for any "governmental entity to sponsor, operate, advertise, promote, license, or authorize by law or compact" any "lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly (through the use of geographical references or otherwise), on one or more competitive games in which amateur or professional athletes participate, or

are intended to participate, or on one or more performances of such athletes in such games." (28 U.S.C. § 3702.)

3. For years, New Jersey has been attempting to devise a way to get around these unambiguous prohibitions and authorize sports gambling in Atlantic City casinos and horse racetracks throughout the state.

a. New Jersey's efforts began in 2012, when it enacted the New Jersey Sports Wagering Law, N.J. Stat. 5:12A-1, *et seq.* (the "2012 Sports Wagering Law"), an open and acknowledged effort to authorize sports gambling in Atlantic City casinos and at New Jersey racetracks. Plaintiffs successfully challenged that statute as a violation of PASPA and, on February 28, 2013, this Court permanently enjoined Governor Christie and defendants David L. Rebuck, director of the New Jersey Division of Gaming Enforcement and assistant attorney general of the State of New Jersey, and Frank Zanzuccki, executive director of the New Jersey Racing Commission, from implementing or enforcing it. (*National Collegiate Athletic Ass'n v. Christie*, 926 F. Supp. 2d 551, 577-79 (D.N.J.), *aff'd*, 730 F.3d 208 (3d Cir. 2013), *cert. denied*, 134 S. Ct. 2866 (2014).)

b. On June 26, 2014, three days after the United States Supreme Court denied defendants' petition for certiorari in the *Christie* matter, the New Jersey legislature passed Senate Bill 2250 ("S2250"), legislation that purported to "repeal" the state's prohibitions on sports gambling, but to do so only at casinos and racetracks, which already are required to ob-

tain a license to offer any form of gambling and to comply with scores of rules and regulations to maintain that license. Governor Christie vetoed that legislation as a transparent attempt to circumvent this Court's injunction in *Christie* and PASPA's prohibitions.

c. On September 8, 2014, Governor Christie, through the state's acting attorney general, issued a directive positing that, notwithstanding the unambiguous terms of this Court's injunction, the operative provisions of the 2012 Sports Wagering Law—which provided that the casinos and racetracks "may operate a sports pool"—remained effective as a "repeal" of previous statutes prohibiting sports wagering, rather than an "authorization" of sports gambling. Only after declaring the directive effective immediately did the governor ask this Court to clarify and/or modify the *Christie* injunction to conform to this dubious theory.

4. On October 17, 2014, before this Court could consider the State's last attempt to circumvent the *Christie* injunction, Governor Christie signed into law Senate Bill S2460 (the "2014 Sports Wagering Law"), which repealed the 2012 Sports Wagering Law in its entirety and replaced it with yet another attempt to authorize sports wagering in Atlantic City casinos and horse racetracks throughout the state.

5. While styled as a "repeal," the 2014 Sports Wagering Law is nothing more than a de facto authorization of sports gambling. Like its vetoed predecessor, the 2014 Sports Wagering Law "repeals" all existing prohibitions, rules, and regulations that are specific to sports wagering, but does so *only* at Atlantic City casinos and horse racetracks throughout the

state—in other words, only at venues that are already state-licensed and regulated.

6. The bill's own sponsors have readily conceded that the 2014 Sports Wagering Law is intended to authorize and promote sports betting at casinos and racetracks. As Assemblyman Ralph Caputo explained: "We want to give the racetracks a shot in the arm. We want to help Atlantic City. We want to do something for the gaming business in the state of New Jersey." Senator Raymond J. Lesniak—perhaps the most ardent and unrelenting proponent of authorized sports betting in New Jersey—similarly told reporters that "Sports betting will be a lifeline to the casinos, putting people to work and generating economic activity in a growth industry."

7. The conclusion that the 2014 Sports Wagering Law is an authorization, rather than the repeal that it purports to be, also is compelled by the New Jersey Constitution. Gambling in New Jersey has been legalized very cautiously, and no gambling may be conducted in the state unless it is permitted by the state's Constitution. And no gambling is permitted under the state's Constitution unless it has been "authorized" by the Legislature and regulations established. (N.J. Const. art. IV, § VII, ¶ 2; *In the Matter of Petition of Casino Licensees*, 268 N.J. Super. 469, 472 (App. Div.), *aff'd*, 138 N.J. 1 (1993).)

8. Moreover, no gambling may be conducted in Atlantic City casinos unless that gambling has been specifically authorized by law. Article IV, Section VII of the New Jersey Constitution unequivocally provides:

> It shall be lawful for the Legislature to authorize by law the establishment and operation, under regulation and control of the State, of gambling houses or casinos within the boundaries, as heretofore established, of the city of Atlantic City, county of Atlantic, and to license and tax such operations and equipment used in connection therewith. . . . The type and number of such casinos or gambling houses and of the gambling games which may be conducted in any such establishment shall be determined by or pursuant to the terms of the law authorizing the establishment and operation thereof.

(N.J. Const. art. IV, § VII, ¶ 2D.) Thus, under the clear provisions of the New Jersey Constitution, the Legislature and the governor are powerless to permit any form of gambling in Atlantic City casinos unless the games are specifically authorized by law.

9. As all of the foregoing confirms, the State's latest attempt to authorize sports gambling is just as unlawful as its previous attempts. As the bill's practical operation reveals, its sponsors concede, and the New Jersey Constitution demands, the 2014 Sports Wagering Law is a blatant effort to authorize sports gambling at venues that are licensed and regulated by the state. It therefore violates both PASPA and this Court's injunction, which prohibits the governor and other state officials from "sponsoring, operating, advertising, promoting, licensing, or authorizing a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly (through

the use of geographical references or otherwise), on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games." (*Christie*, 926 F. Supp. 2d at 577-79.)

10. Alternatively, if the 2014 Sports Wagering Law really is nothing more than the repeal that it purports to be, then it violates the New Jersey Constitution, which requires any gambling to be specifically *authorized* by the Legislature.

11. At least one New Jersey racetrack, Monmouth Park Racetrack, a facility operated by defendant New Jersey Thoroughbred Horsemen's Association but owned by defendant New Jersey Sports and Exposition Authority—which, to make matters worse, is a state entity independently prohibited by PASPA from sponsoring, operating, advertising, or promoting sports gambling—has stated its intention to start offering sports gambling pursuant to the 2014 Sports Wagering Law as early as October 26, 2014.

12. As this Court already has held, the spread of state-sponsored sports gambling in New Jersey would irreparably harm plaintiffs. (*Christie*, 926 F. Supp. 2d at 578.) Indeed, this Court and Third Circuit have recognized that the spread of state-sponsored sports gambling "would engender the very ills that PASPA sought to combat." Accordingly, injunctive relief is imperative to prevent the irreparable injury that will occur should the 2014 Sports Wagering Law take effect

and defendants or anyone else begin sponsoring, operating, advertising, promoting, licensing, or authorizing sports gambling pursuant to its terms.

The Parties

13. Plaintiff the NCAA is a voluntary unincorporated association of approximately 1,300 members consisting of colleges, universities, conferences, associations, and other educational institutions. Governed by its member institutions, the NCAA's fundamental purpose is to maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body. The NCAA's headquarters are located at 700 West Washington Street, Indianapolis, Indiana 46204.

14. Plaintiff the NBA is a voluntary membership association that operates a professional basketball league consisting of thirty members and their member teams, with its principal place of business located at 645 Fifth Avenue, New York, New York 10022. The NBA engages in the production and marketing of NBA basketball and operates a professional basketball league in the United States and Canada.

15. Plaintiff the NFL is an unincorporated association controlled by its thirty-two constituent member clubs. Originally formed in 1920 as the American Professional Football Conference, the league has been operating under the NFL moniker since 1922. The NFL's headquarters are located at 345 Park Avenue, New York, New York 10154.

16. Plaintiff the NHL is an unincorporated association, composed of thirty Member Clubs that are located throughout the United States and Canada. The NHL League Office headquarters are located at 1185 Avenue of the Americas, New York, New York 10036.

17. Plaintiff MLB is an unincorporated association whose members are the thirty Major League Baseball Clubs. MLB, on behalf of its members, has responsibility for administrative and operational matters relating to Major League Baseball. MLB headquarters are located at 245 Park Avenue, New York, New York 10167.

18. Defendant Christopher J. Christie is the governor of the State of New Jersey. Elected to office in November 2009, Governor Christie was sworn into office on January 19, 2010. Governor Christie was a defendant in *Christie*, and is bound by the permanent injunction entered in that case.

19. Defendant David L. Rebuck is an assistant attorney general of the State of New Jersey and the current director of the New Jersey Division of Gaming Enforcement ("DGE"), an agency created by N.J. Stat. 5:12-55 that operates as a division of the Department of Law and Public Safety. The director of the DGE is appointed by the governor with the advice and consent of the New Jersey Senate. Defendant Rebuck has primary responsibility for overseeing casino operations in New Jersey. Defendant Rebuck was a defendant in *Christie*, and is bound by the permanent injunction entered in that case. Defendant Rebuck is responsible for licensing and overseeing casinos within the State of New Jersey, and upon information and belief will

license and oversee casinos that operate sports betting pools established under the 2014 Sports Wagering Law if not enjoined.

20. Defendant Frank Zanzuccki is the executive director of the New Jersey Racing Commission, an agency created by N.J. Stat. 5:5-22 that advocates the growth, development and promotion of the horse racing industry in the state. The executive director is appointed by the nine commissioners of the New Jersey Racing Commission, each of whom is appointed by the governor with the advice and consent of the New Jersey Senate. N.J. Stat. 5:5¬ 23, 25. Defendant Zanzuccki is responsible for licensing and overseeing horse racing tracks within the State of New Jersey, and upon information and belief will license and oversee horse racing tracks that operate sports betting pools established under the 2014 Sports Wagering Law if not enjoined.

21. Defendant New Jersey Thoroughbred Horsemen's Association, Inc. ("NJTHA") is the licensed operator and permit holder of Monmouth Park Racetrack. As a racetrack operator and holder of a permit from the State of New Jersey, NJTHA is subject to regulations of both the New Jersey Racing Commission and the DGE. NJTHA intervened as a defendant in *Christie*.

22. Defendant New Jersey Sports and Exposition Authority ("NJSEA") is a "public body corporate and politic" established by New Jersey statute and comprising of, *inter alia*, the New Jersey state treasurer and members appointed by the governor and New Jersey Legislature. N.J. Stat. 5:10-4. NJSEA owns,

among other venues, Monmouth Park and the Meadowlands.

Jurisdiction and Venue

23. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1367.

24. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PASPA Prevents States From Sponsoring, Operating, Advertising, Promoting, Licensing, Or Authorizing Sports Gambling

25. PASPA was enacted on October 28, 1992, and became effective on January 1, 1993, amid growing public concern over the significant harm that would result from the spread of gambling on amateur and professional sporting events in the United States. With four narrow exceptions not applicable to this case, PASPA makes it unlawful for any "governmental entity to sponsor, operate, advertise, promote, license, or authorize by law or compact" and any "person to sponsor, operate, advertise, or promote, pursuant to the law or compact of a governmental entity" any "lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly (through the use of geographical references or otherwise), on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games." (28 U.S.C. § 3702.)

26. PASPA explicitly gives amateur and professional sports organizations, like plaintiffs, standing to seek an injunction for any violation of its provisions. (28 U.S.C. § 3703.)

27. Under the plain terms of PASPA, New Jersey is expressly barred from sponsoring, operating, advertising, promoting, licensing, or authorizing sports-based gambling, and casinos and racetracks within the state are prohibited from engaging in such activities pursuant to state law.

All Gambling Within New Jersey Is Prohibited Unless Specifically Permitted By The New Jersey State Constitution

28. The New Jersey Constitution prohibits any kind of gambling not specifically permitted by that document. (*In the Matter of Petition of Casino Licensees*, 268 N.J. Super. 469, 472 (App. Div.), *aff'd*, 138 N.J. 1 (1993).) The New Jersey Constitution provides:

> No gambling of any kind shall be authorized by the Legislature unless the specific kind, restrictions and control thereof have been heretofore submitted to, and authorized by a majority of the votes cast by, the people at a special election or shall hereafter be submitted to, and authorized by a majority of the votes cast thereon by, the legally qualified voters of the State voting at a general election....

(N.J. Const. Art. IV, § VII, ¶ 2.)

29. The New Jersey Constitution provides certain, narrow exceptions to the foregoing broad prohibition, such as exemptions for state lotteries and charitable contests. (*See id.*) Relevant to the instant case, the New Jersey Constitution expressly provides, however, that no type of gambling may be conducted in such Atlantic City casinos or gambling houses unless it has been authorized by the Legislature. Specifically, the New Jersey Constitution states:

> It shall be lawful for the Legislature to authorize by law the establishment and operation, under regulation and control by the State, of gambling houses or casinos within the boundaries, as heretofore established, of the city of Atlantic City, county of Atlantic, and to license and tax such operations and equipment used in connection therewith . . . **The type and number of such casinos or gambling houses and of the gambling games which may be conducted in any such establishment shall be determined by or pursuant to the terms of the law authorizing the establishment and operation thereof.** It shall also be lawful for the Legislature to authorize by law wagering at casinos or gambling houses in Atlantic City on the results of any professional, college, or amateur sport or athletic event, except that wagering shall not be permitted on a college sport or athletic event that takes place in New Jersey or on a sport or athletic event in which any New

> Jersey college team participates regardless of where the event takes place.

(N.J. Const., art. IV, § VII, ¶ 2D (emphases added).)

30. The New Jersey Constitution further permits the Legislature to authorize by law certain forms of gambling at New Jersey racetracks, provided, however, that those activities are "under restrictions and control" of the state:

> It shall be lawful for the Legislature to authorize, by law, the specific kind, restrictions and control of wagering on the results of live or simulcast running and harness horse races conducted within or outside of this State . . . It shall also be lawful for the Legislature to authorize by law wagering at current or former running and harness horse racetracks in this State on the results of any professional, college, or amateur sport or athletic event, except that wagering shall not be permitted on a college sport or athletic event that takes place in New Jersey or on a sport or athletic event in which any New Jersey college team participates regardless of where the event takes place.

(N.J. Const., art. IV, § VII, ¶ 2F.)

31. The New Jersey Constitution, therefore, prohibits any type of gambling, including sports gambling, from being conducted in Atlantic City casinos or

New Jersey racetracks unless such gambling is expressly authorized by law and subject to the regulation and control of the State of New Jersey.

This Court Permanently Enjoined New Jersey From Sponsoring, Operating, Advertising, Promoting, Licensing, Or Authorizing Sports Gambling

32. On January 17, 2012, Governor Christie signed the 2012 Sports Wagering Law, N.J. Stat. 5:12A-1, *et seq.*, which authorized sports gambling at Atlantic City casinos and New Jersey racetracks upon the approval of the DGE and, for the racetracks, the New Jersey Racing Commission, and in accordance with applicable regulations promulgated pursuant to the statute. (N.J. Stat. 5:12A-2.)

33. On August 7, 2012, plaintiffs filed a complaint in this Court against Governor Christie and defendants Rebuck and Zanzuccki (collectively, the "*Christie* defendants") seeking a declaration that the 2012 Sports Wagering Law violated PASPA insofar as it purported to enable the State of New Jersey and its officials to sponsor, operate, advertise, promote, license, and/or authorize sports betting schemes in New Jersey. On August 10, 2012, plaintiffs moved for summary judgment.

34. On February 28, 2013, this Court granted plaintiffs' motion for summary judgment and permanently enjoined the *Christie* defendants from "sponsoring, operating, advertising, promoting, licensing, or authorizing a lottery, sweepstakes, or other betting,

gambling, or wagering scheme based, directly or indirectly . . . on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games." (*Christie*, 926 F. Supp. 2d at 578-79.)

35. On September 17, 2013, the Third Circuit Court of Appeals affirmed the grant of summary judgment and entry of the permanent injunction. (730 F.3d 208 (3d Cir. 2013).) On November 15, 2013, the Third Circuit denied New Jersey's petition for a rehearing *en banc*. On June 23, 2014, the United States Supreme Court denied defendants' petition for a writ of certiorari. (134 S. Ct. 2866 (2014).)

Undeterred, The New Jersey Legislature Passes A Bill To Authorize Sports Wagering In Casinos And Racetracks

36. In May 2014, before the United States Supreme Court had ruled on the *Christie* defendants' petition for a writ of certiorari, Senator Lesniak announced that he had "legislation being drafted and that will be introduced, to allow casinos and racetracks to have sports betting on our premises." ("NJ Sen. Lesniak to craft sports betting bill for racetracks, casinos," May 19, 2014 (available at www.northjersey.com/news/nj-sen-lesniak-to-craft-sports-betting-bill-for-racetracks-casinos-1.1019252).) According to Senator Lesniak, notwithstanding the judgment of two federal courts, and any action the Supreme Court may take, "we will push the envelope on sports betting [and] we are not going to be deterred." (*Id.*)

37. On June 23, 2014, the same day that the Supreme Court denied the *Christie* defendants' certiorari petition, Senator Lesniak and others in the Legislature introduced S2250, a bill designed to achieve precisely the same thing as the 2012 Sports Wagering Law that this Court enjoined namely, authorize sports gambling at casinos and racetracks. S2250 attempted to do so by "partially repealing" New Jersey's statutory prohibitions only as applied to "sports wagering in casinos in Atlantic City and at racetracks across New Jersey." The legislation explicitly stated that it was passed "in response to the decision of the ... Third Circuit." Three days later, the Legislature passed S2250 without floor debate or other recorded discussion concerning the bill.

38. On July 6, 2014, Senator Lesniak explained the purpose of S2250, which was, in essence, the same as the purpose behind the 2012 Sports Wagering Law: "Legalizing sports wagering recognizes the inevitable—that people are going to bet on sports, whether the practice is legal or not, and that we should provide a safe and legal avenue for them to bet on their favorite teams. By mainstreaming sports wagering, we can . . . put it in the regulated hands of existing casino and racetrack operators. And we can create new jobs and new economic opportunities for our ailing gaming establishments." ("Sen. Raymond J. Lesniak / Sports betting fight must continue," July 6, 2014 (available at www.pressofatlanticcity.com/opinion/commentary/sen-raymond-j-lesniak-sports-betting-fight-must-continue/article_a486fcd0-04fe-11e4-b21e-001a4bcf887a.html).)

39. On August 8, 2014, Governor Christie vetoed S2250, describing the bill as a "novel attempt to circumvent the Third Circuit's ruling" by, "[i]n essence, partially deregulat[ing] betting at casinos and racetracks in an attempt to sidestep federal law." ("Inside the Chris Christie New Jersey Sports Betting Veto," August 9, 2014 (available at http://www.4flush.com/casino-news/inside-the-chris-christie-new-jersey-sports-betting-veto/17548).) Noting that the bill was "rushed to final passage," Governor Christie reiterated that he could not support "[i]gnoring federal law" because "the rule of law is sacrosanct, binding on all Americans." (*Id.*)

The Governor's Office Acts To Authorize Sports Wagering

40. Notwithstanding the Governor's disapproval of the legislature's blatant attempt to circumvent PASPA and this Court's judgment, on September 8, 2014, New Jersey's acting attorney general issued and declared immediately effective a directive to state agencies to stop enforcing existing prohibitions on sports gambling in casinos and racetracks.

41. This directive announced the Governor's newly minted and blatantly atextual position that the provisions of the 2012 Sports Wagering Law that expressly stated that permitted casinos and racetracks "may operate a sports pool"—*i.e.*, the provisions that state officials throughout the *Christie* litigation had touted as authorizing sports betting in New Jersey—were, in fact, not an authorization of sports betting at all, but merely a repeal of existing state prohibitions

on sports betting at such venues. As such, the directive declared that the most critical provisions of the 2012 Sports Wagering Law were not invalided by this Court's injunction or the Third Circuit's decision affirming it, but rather "remain in force and effect."

42. In light of this novel position, the acting attorney general instructed the Division of Criminal Justice and the Department of Law and Public Safety that they should not object to or seek, either criminally or civilly, to enjoin a sports pool operated by a casino or racetrack, provided that such sports pool does not permit wagering on college sporting events that take place in New Jersey or in which any New Jersey college team participates.

43. The *Christie* defendants did not ask this Court to sanction this end-run around its permanent injunction beforehand. Instead, they waited until the directive was already issued and declared immediately effective, and only then moved this Court to "clarify" or, alternatively, "modify" its permanent injunction to permit New Jersey's transparent effort to sponsor, operate, advertise, promote, license, and/or authorize sports betting pursuant to the 2012 Sports Wagering Law that this Court had already held preempted by PASPA.

44. Plaintiffs and the United States Department of Justice filed their opposition to the motion on September 29, 2014. Before the *Christie* defendants' reply briefs were due, however, on October 17, 2014, Governor Christie signed the 2014 Sports Wagering Law which, among other things, repealed the 2012 Sports

Wagering Law. The *Christie* defendants then withdrew their pending motion for clarification and/or modification of the permanent injunction.

New Jersey Passes *Another* Bill To Authorize Sports Wagering In Casinos And Racetracks

45. The 2014 Sports Wagering Law is New Jersey's latest attempt to accomplish exactly what Congress and this Court have already prohibited it from doing: sponsor, operate, advertise, promote, license, and/or authorize sports betting. The 2014 Sports Wagering Law does so by purporting to "repeal" prohibitions, rules, and regulations on sports gambling, but doing so *only* at Atlantic City casinos and New Jersey racetracks—in other words, only at venues that already are required by state law to obtain a license to operate and offer *any* kind of gambling, and subject to a whole host of rules and regulations on the manner in which they may operate.

46. To that end, in addition to repealing the 2012 Sports Wagering Law, the 2014 Sports Wagering Law purports to repeal any rules and regulations at casinos and racetracks that are *specific* to sports gambling.

47. What the bill does *not* repeal, however, is the requirement to obtain a license from the state to operate a casino or racetrack, or the scores of rules and regulations with which casinos and racetracks must comply in order to maintain such a license. *See, e.g.*, N.J. Stat. 5:12-96 (casinos may not conduct gaming or remain open without a valid operation certificate from

the state); 5:12-100 (only permitting conduct of "authorized games" in casinos); 5:5-50 (establishing permitting obligations for racetracks); § 5:5-30 (NJRC has "full power to prescribe rules, regulations and conditions under which all horse races shall be conducted"); 5:5-63 (New Jersey Racing Commission must approve all mutuel boards or machines that display wagering odds); 5:5-67 (recordkeeping requirements for racetracks); 5:12-130 (sanctioning "unlawful acts" by casino licensees); *see generally* N.J.A.C. 13:69-74B (regulations governing casino gambling and horse racetracks).

48. The 2014 Sports Wagering Law also does not repeal existing prohibitions on sports gambling with respect to "a collegiate sport contest or collegiate athletic event that takes place in New Jersey or . . . in which any New Jersey college team participates regardless of where the event takes place." This statutory language tracks verbatim the New Jersey Constitution's limitation on the scope of the legislature's power "to authorize by law" sports gambling, thus underscoring that the Legislature itself recognized that it was authorizing sports gambling when it enacted the 2014 Sports Wagering Law (N.J. Const., art. IV, § VII, ¶¶ 2D, 2F), as well as the harm it was causing to those whose games would be the subject of the state's wagering scheme.

49. The 2014 Sports Wagering Law also does not (indeed, could not) repeal the New Jersey Constitution provisions prohibiting all types of gambling—and especially all types of gambling at Atlantic City casinos and New Jersey racetracks—unless they are spe-

cifically authorized by law and subject to the regulation and control of the State of New Jersey. Once again, this underscores that the Legislature understood that it was exercising its power to *authorize* sports gambling, regardless of the window dressing in which it was engaged.

50. In fact, all of the long-standing state prohibitions against wagering remain in place following the state's fictional "repeal" of its wagering laws. In addition to the state's Constitutional prohibitions against wagering remaining, all of the state's civil prohibitions against gambling remain intact. *See*, *e.g.*, N.J. Stat. 2A:40-1 ("All wagers, bets or stakes made to depend upon any race or game, or upon any gaming by lot or chance, or upon any lot, chance, casualty or unknown or contingent event, shall be unlawful."). Likewise, all of the State's criminal prohibitions against gambling remain unchanged. *See*, *e.g.*, N.J. Stat. 2C:37-2 (prohibiting promotion of gambling).

51. Thus, the state has hardly "repealed" any of its myriad anti-gambling laws, or even a single part of those laws. Rather, the state has merely exempted from these laws two narrow groups—state-licensed casinos and state-licensed racetracks—all in a clear effort to authorize and promote sports wagering.

52. Indeed, the bill's sponsors have made clear that the 2014 Sports Wagering Law is intended to authorize and promote sports wagering in Atlantic City casinos and New Jersey racetracks. Senator Lesniak stated that the purpose of the 2014 Sports Wagering Law is the same as that of the 2012 Sports Wagering Law: "Sports betting will be a lifeline to the casinos,

putting people to work and generating economic activity in a growth industry." ("Kyrillos and Lesniak Fast Track Sports Betting Legislation," October 1, 2014 (available at http://www.moremonmouthmusings.net/2014/10/01/kyrillos-and-lesniak-fast-track-sports-betting-legislation/).) Speaking about the new law prior to the governor's signature, Senator Lesniak said, "We are a short step away from getting this done and a lot closer to bringing sports betting to New Jersey." ("Sports betting bill heads to Christie's desk after Assembly Approval," October 16, 2014 (available at http://www.njbiz.com/article/20141016/NJBIZ01/141019817/Sports-betting-bill-heads-to-Christie%E2%80%99s-desk-after-Assembly-approval).) He explained that "[i]t's been a long, tough effort and we've gone up against powerful interests, but now there is an urgency because sports gaming will be a lifeline to the Atlantic City casino industry at a critical time. It will produce jobs, generate economic activity and be a long-term benefit to New Jersey. I urge the governor to sign it into law as fast he can." (*Id.*)

53. Assemblyman Ralph Caputo offered a similar rationale for the law: "We want to give the racetracks a shot in the arm. We want to help Atlantic City. We want to do something for the gaming business in the state of New Jersey." ("Sports leagues continue push against N.J. wagering; lawmaker hones bill to permit it," September 30, 2014 (available at http://www.newsworks.org/index.php/arts-culture/item/73396-college-pro-sports-continues-push-against-nj-wagers).) "Everyone recognizes the problems of Atlantic City and the racetracks," Assemblyman Caputo said before the law's enactment. ("Sports

betting bill heads to Christie's desk after Assembly Approval" (*see supra* ¶ 52).) "This would be a tremendous boost and a historic move for the state of New Jersey to permit that kind of activity here." (*Id.*)

54. "Sports betting can assist New Jersey's struggling casino industry and with our challenges at Monmouth Park Racetrack," Senator Joseph M. Kyrillos, another of the bill's sponsors, said prior to the governor's signature. (*Id.*) "Both houses of the Legislature acted quickly to approve this critical measure and I am confident Governor Christie will join our efforts to help protect Atlantic City and Monmouth Park jobs by signing the bill into law." (*Id.*)

State-Owned Monmouth Park Racetrack's Immediate Plans To Commence Sports Wagering Pursuant To The 2014 Sports Wagering Law

55. Within hours of Governor Christie's signing of the 2014 Sports Wagering Law, Monmouth Park Racetrack announced that it will "begin offering and accepting wagers on sporting contests and athletic events on Sunday, Oct. 26 at the racetrack." ("Monmouth Park To Start Sports Betting October 26," October 17, 2014 (available at http://www.monmouthpark.com/News.aspx?id= 8985).)

56. Monmouth Park Racetrack is owned by defendant NJSEA, which is a legislatively created "instrumentality of the state exercising public and essential governmental functions." N.J. Stat. 5:10-4(a). Revenue derived from the NJSEA "shall be deemed and held to be applied in support of government." (*Id.*)

57. Accordingly, any sports wagering at Monmouth Park (or the NJSEA-owned Meadowlands Racetrack) would violate the provisions of PASPA that prohibit a state from directly sponsoring, operating, or advertising sports wagering, regardless of whether those facilities purport to offer gambling pursuant to a state authorization or a state repeal.

COUNT I
(Violation of PASPA, 28 U.S.C. § 3702(1))
(Against Defendants Christie, Rebuck and Zanzuccki)

58. Plaintiffs repeat and reallege the allegations contained in the foregoing paragraphs as though fully set forth herein.

59. PASPA prohibits any governmental entity from sponsoring, operating, advertising, promoting, licensing or authorizing sports gambling, sports wagering, or a sports lottery. (28 U.S.C. § 3702(1).)

60. Despite its "repeal" language, the 2014 Sports Wagering Law is a blatant attempt by the State of New Jersey to sponsor, operate, advertise, promote, license and/or authorize sports gambling in Atlantic City casinos and at New Jersey racetracks. As such, the 2014 Sports Wagering Law violates PASPA.

61. If the 2014 Sports Wagering Law is not declared unlawful and injunctive relief not granted, the proliferation of state-sponsored and approved sports gambling in Atlantic City casinos and at New Jersey racetracks will cause immediate and irreparable harm to plaintiffs. Indeed, the harm will be precisely

the same as the harm this Court already found sufficient to warrant injunctive relief when the same plaintiffs challenged the 2012 Sports Wagering Law. As the Court already concluded, monetary damages would be inadequate to compensate plaintiffs for the irreparable injuries they will suffer.

COUNT II
(Violation of New Jersey Constitution)
(Against All Defendants)

62. Plaintiffs repeat and reallege the allegations contained in the foregoing paragraphs as though fully set forth herein.

63. Under the New Jersey Constitution, no gambling activity may be conducted within an Atlantic City casino or at a New Jersey racetrack unless it is expressly authorized by law.

64. If the 2014 Sports Wagering Law does not constitute the authorization by law of sports gambling in violation of PASPA, then it violates Article IV, Section VII of the New Jersey Constitution.

65. If the 2014 Sports Wagering Law is not declared unlawful and injunctive relief not granted, the proliferation of state-sponsored and approved sports gambling in Atlantic City casinos and at New Jersey racetracks will cause immediate and irreparable harm to plaintiffs. Indeed, the harm will be precisely the same as the harm this Court already found sufficient to warrant injunctive relief when the same plaintiffs challenged the 2012 Sports Wagering Law. As the Court already concluded, monetary damages

would be inadequate to compensate plaintiffs for the irreparable injuries they will suffer.

COUNT III
(Violation of PASPA, 28 U.S.C. § 3702(1))
(Against Defendant NJSEA)

66. Plaintiffs repeat and reallege the allegations contained in the foregoing paragraphs as though fully set forth herein.

67. PASPA prohibits any governmental entity from sponsoring, operating, advertising, promoting, licensing or authorizing sports gambling, sports wagering, or a sports lottery. (28 U.S.C. § 3702(1).)

68. NJSEA is a governmental entity. It owns the Monmouth Park Racetrack and has licensed and authorized NJTHA to offer sports gambling activities at Monmouth Park pursuant to the 2014 Sports Wagering Law. It also owns the Meadowlands racetrack, at which sports wagering might also be commenced pursuant to the 2014 Sports Wagering Law. Any sports gambling at Monmouth Park or Meadowlands racetracks would constitute sponsorship, operation, authorization, and promotion of sports gambling by NJSEA, a governmental entity, in violation of PASPA. (28 U.S.C. § 3702(1).)

69. If the 2014 Sports Wagering Law is not declared unlawful and injunctive relief not granted, the proliferation of state-sponsored and approved sports gambling in Atlantic City casinos and at New Jersey racetracks will cause immediate and irreparable harm to plaintiffs. Indeed, the harm will be precisely

the same as the harm this Court already found sufficient to warrant injunctive relief when the same plaintiffs challenged the 2012 Sports Wagering Law. As the Court already concluded, monetary damages would be inadequate to compensate plaintiffs for the irreparable injuries they will suffer.

COUNT IV
(Violation of PASPA, 28 U.S.C. § 3702(2))
(Against Defendant NJTHA)

70. Plaintiffs repeat and reallege the allegations contained in the foregoing paragraphs as though fully set forth herein.

71. Under the plain language of PASPA, persons or entities in New Jersey are prohibited from sponsoring, operating, advertising, or promoting, pursuant to the law or compact of a governmental entity, sports gambling, sports wagering, or a sports lottery. (28 U.S.C. § 3702(2).)

72. Defendant NJTHA has announced its intention to begin sports gambling activities at Monmouth Park pursuant to the 2014 Sports Wagering Law. Such sports gambling would constitute sponsorship, operation, advertising, or promotion of sports wagering pursuant to the law of a governmental entity in violation of PASPA.

73. In addition, because the NJTHA's operation of Monmouth Park is pursuant to an agreement with defendant NJSEA, the conduct of sports wagering at Monmouth Park constitutes sponsorship, operation, advertising, or promotion of sports wagering pursuant

to a compact with a governmental entity in violation of PASPA.

74. If the 2014 Sports Wagering Law is not declared unlawful and injunctive relief not granted, the proliferation of state-sponsored and approved sports gambling in Atlantic City casinos and at New Jersey racetracks will cause immediate and irreparable harm to plaintiffs. Indeed, the harm will be precisely the same as the harm this Court already found sufficient to warrant injunctive relief when the same plaintiffs challenged the 2012 Sports Wagering Law. As the Court already concluded, monetary damages would be inadequate to compensate plaintiffs for the irreparable injuries they will suffer.

WHEREFORE, plaintiffs respectfully seek an Order of this Court:

a. Declaring that the 2014 Sports Wagering Law violates PASPA by sponsoring, operating, advertising, promoting, licensing, and/or authorizing sports betting schemes in Atlantic City casinos and New Jersey racetracks;

b. Alternatively declaring that the 2014 Sports Wagering Law violates the New Jersey Constitution;

c. Pursuant to PASPA, preliminarily and permanently enjoining defendants, and all others acting on their authority, instruction, and behalf, or under the authority of their respective offices, from implementing or enforcing the 2014 Sports Wagering Law, and from sponsoring, operating, advertising, promoting, licensing, or authorizing any lottery,

sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly, on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games;

d. Alternatively, pursuant to the New Jersey Constitution, preliminarily and permanently enjoining defendants, and all others acting on their authority, instruction, and behalf, or under the authority of their respective offices, from implementing or enforcing the 2014 Sports Wagering Law;

e. Awarding plaintiffs their costs and attorneys' fees; and

f. Granting such other and further relief as may be appropriate.

Dated: October 20, 2014

Respectfully Submitted,

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NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, an unincorporated association, NATIONAL BASKETBALL ASSOCIATION, a joint venture, NATIONAL FOOTBALL LEAGUE, an unincorporated association, NATIONAL HOCKEY LEAGUE, an unincorporated association, and OFFICE OF THE COMMISSIONER OF BASEBALL, an unincorporated association doing business as Major League Baseball,	:	**UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY** Civil Action No. 3:14-cv-06450(MAS)(LHG) **PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR APPLICATIONS FOR A TEMPORARY RESTRAINING**

Plaintiffs, v. CHRISTOPHER J. CHRISTIE, Governor of the State of New Jersey, DAVID L. REBUCK, Director of the New Jersey Division of Gaming Enforcement and Assistant Attorney General of the State of New Jersey, and FRANK ZANZUCCKI, Executive Director of the New Jersey Racing Commission, NEW JERSEY THOROUGHBRED HORSEMEN'S ASSOCIATION, INC., and NEW JERSEY SPORTS AND EXPOSITION AUTHORITY, Defendants.	**ORDER, PRELIMINARY INJUNCTION, AND TO ENFORCE THE PERMANENT INJUNCTION ISSUED IN 12-CV-04947**
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, an unincorporated association, NATIONAL BASKETBALL ASSOCIATION, a joint venture, NATIONAL FOOTBALL LEAGUE, an unincorporated association, NATIONAL HOCKEY	Civil Action No. 3:12-cv-4947 (MAS) (LHG)

LEAGUE, an unincorporated association, and OFFICE OF THE COMMISSIONER OF BASEBALL, an unincorporated association doing business as Major League Baseball,

Plaintiffs,

v.

CHRISTOPHER J. CHRISTIE, Governor of the State of New Jersey, DAVID L. REBUCK, Director of the New Jersey Division of Gaming Enforcement and Assistant Attorney General of the State of New Jersey, and FRANK ZANZUCCKI, Executive Director of the New Jersey Racing Commission,

Defendants,

and

STEPHEN M. SWEENEY, President of the New Jersey Senate, SHEILA Y. OLIVER, Speaker of the New Jersey General Assembly, and NEW JERSEY THOROUGHBRED HORSEMEN'S ASSOCIATION, INC.,

Defendant-Intervenors	:
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Preliminary Statement

Plaintiffs National Collegiate Athletic Association (the "NCAA"), National Basketball Association (the "NBA"), National Football League (the "NFL"), National Hockey League (the "NHL"), and Office of the Commissioner of Baseball doing business as Major League Baseball ("MLB"), respectfully submit this memorandum of law in support of their motion for a temporary restraining order and a preliminary injunction, enjoining defendants from giving effect to Senate Bill 2460 (the "2014 Sports Wagering Law"), and to enforce this Court's previous injunction, entered in *National Collegiate Athletic Ass'n v. Christie*, 926 F. Supp. 2d 551, 577-79 (D.N.J.), *aff'd*, 730 F.3d 208 (3d Cir. 2013), *cert. denied*, 134 S. Ct. 2866 (2014).

The 2014 Sports Wagering Law, which defendant Governor Christopher J. Christie signed into law on Friday, October 17, 2014, constitutes New Jersey's latest effort—in defiance of both this Court's February 28, 2013 Order and clear and binding federal law—to accomplish what it unsuccessfully attempted to do nearly three years ago: sponsor, operate, advertise, promote, license, or authorize gambling on amateur and professional sports at state-licensed casinos and horse racetracks. Because this effort is no more lawful than New Jersey's past efforts to do the same thing, it, too, should be enjoined.[1]

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[1] A copy of S2460, enacted as P.L. 2015, c. 62, is attached as Exhibit 1 to the Declaration of Anthony J. Dreyer, sworn to on October 20, 2014, and submitted herewith ("Dreyer Decl.").

The federal Professional and Amateur Sports Protection Act, 28 U.S.C. § 3701, *et seq.* ("PASPA"), with limited exceptions not applicable here, makes it unlawful for any "governmental entity to sponsor, operate, advertise, promote, license, or authorize by law or compact" any "lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly (through the use of geographical references or otherwise), on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games." 28 U.S.C. § 3702.

For years, New Jersey has been attempting to devise a way to get around these unambiguous prohibitions and authorize sports gambling specifically at Atlantic City casinos and horse racetracks throughout the State—and at those state-authorized gambling venues alone. New Jersey's efforts began in 2012, when it enacted the New Jersey Sports Wagering Law, N.J. Stat. 5:12A-1, *et seq.* (the "2012 Sports Wagering Law"), an open and acknowledged effort to authorize sports gambling in Atlantic City casinos and at New Jersey racetracks. Plaintiffs successfully challenged that statute as a violation of PASPA and, on February 28, 2013, this Court permanently enjoined Governor Christie and defendants David L. Rebuck, director of the New Jersey Division of Gaming Enforcement and assistant attorney general of the State of New Jersey, and Frank Zanzuccki, executive director of the New Jersey Racing Commission, from implementing or enforcing it. *Christie*, 926 F. Supp. 2d at 577-79.

On June 26, 2014, three days after the United States Supreme Court denied defendants' petition for certiorari in the *Christie* matter, the Legislature passed Senate Bill 2250, legislation that purported to "repeal" the State's prohibitions on sports gambling, but to do so only at casinos and racetracks, which already are required to obtain a license to offer any form of gambling and to comply with scores of rules and regulations to maintain that license. Governor Christie vetoed that legislation as a transparent attempt to circumvent this Court's injunction in *Christie* and PASPA's prohibitions.

On September 8, 2014, Governor Christie, through the State's acting attorney general, issued a directive positing that, notwithstanding the unambiguous terms of this Court's injunction, the operative provisions of the 2012 Sports Wagering Law—which provided that the casinos and racetracks "may operate a sports pool"—remained effective as a "repeal" of previous statutes prohibiting sports wagering, rather than an "authorization" of sports gambling. Only after declaring the directive effective immediately did the governor ask this Court to clarify and/or modify the *Christie* injunction to conform to this dubious theory.

On October 17, 2014, before this Court could consider the State's last attempt to circumvent the *Christie* injunction, Governor Christie signed into law the 2014 Sports Wagering Law, which repealed the 2012 Sports Wagering Law in its entirety and replaced it with yet another attempt to authorize sports wagering in Atlantic City casinos and horse racetracks—and in those state-authorized gambling venues alone.

While styled as a "repeal," the 2014 Sports Wagering Law is nothing more than a de facto authorization of sports gambling. Like its vetoed predecessor, the 2014 Sports Wagering Law "repeals" all existing prohibitions, rules, and regulations that are specific to sports wagering (excluding collegiate contests in New Jersey or involving New Jersey colleges or universities), but does so *only* at Atlantic City casinos and horse racetracks throughout the State—in other words, only at state-authorized gambling venues that are already carefully licensed and regulated by the State. The bill's own sponsors have readily acknowledged that the evident purpose and effect of the 2014 Sport Wagering Law is to authorize and promote sports betting at casinos and racetracks. As Assemblyman Ralph Caputo explained: "We want to give the racetracks a shot in the arm. We want to help Atlantic City. We want to do something for the gaming business in the state of New Jersey." (Dreyer Decl. Ex. 2.) Senator Raymond J. Lesniak—perhaps the most ardent and unrelenting proponent of authorized sports betting in New Jersey—similarly told reporters that "Sports betting will be a lifeline to the casinos, putting people to work and generating economic activity in a growth industry." (Dreyer Decl. Ex. 3.)

The conclusion that the 2014 Sports Wagering Law is an authorization, rather than the mere repeal that it purports to be, also is compelled by the New Jersey Constitution. Gambling in New Jersey has been legalized cautiously, such that no gambling may be conducted in the State unless it is permitted by the State's Constitution. And no gambling is permitted under the State's Constitution unless it has been authorized by law by the Legislature. N.J. Const. art. IV,

§ VII, ¶ 2; *In the Matter of Petition of Casino Licensees*, 268 N.J. Super. 469, 472 (App. Div.), *aff'd*, 138 N.J. 1 (1993). Moreover, no gambling may be conducted in Atlantic City casinos unless that gambling has been specifically authorized by law. Article IV, Section VII of the New Jersey Constitution unequivocally provides:

> It shall be lawful for the Legislature to authorize by law the establishment and operation, under regulation and control of the State, of gambling houses or casinos within the boundaries, as heretofore established, of the city of Atlantic City, county of Atlantic, and to license and tax such operations and equipment used in connection therewith. . . The type and number of such casinos or gambling houses and of the gambling games which may be conducted in any such establishment shall be determined by or pursuant to the terms of the law authorizing the establishment and operation thereof.

N.J. Const. art. IV, § VII, ¶ 2D. Thus, under the clear provisions of the New Jersey Constitution, the Legislature and the governor are powerless to permit any form of gambling in Atlantic City casinos unless the games are specifically authorized by law.

As all of the foregoing confirms, the State's latest attempt to authorize sports gambling at its carefully regulated state-authorized gambling venues is just as unlawful as its previous efforts. As the bill's practical operation reveals, its sponsors concede, and the New

Jersey Constitution demands, the 2014 Sports Wagering Law is a blatant effort to authorize sports gambling at venues that are licensed and regulated by the State. It therefore violates both PASPA and this Court's injunction, which prohibits the governor and other state officials from "sponsoring, operating, advertising, promoting, licensing, or authorizing a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly (through the use of geographical references or otherwise), on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games." *Christie*, 926 F. Supp. 2d at 577-79. Alternatively, if the law really is nothing more than the repeal that it purports to be, then it violates the New Jersey Constitution, which requires any gambling to be specifically *authorized* by the Legislature.

Injunctive relief is necessary to preserve the longstanding status quo. At least one New Jersey racetrack, Monmouth Park Racetrack, a facility operated by defendant New Jersey Thoroughbred Horsemen's Association ("NJTHA") but owned by defendant New Jersey Sports and Exposition Authority ("NJSEA")—which is a state entity independently prohibited by PASPA from sponsoring, operating, advertising, or promoting sports gambling—has stated its intention to start offering sports gambling pursuant to the 2014 Sports Wagering Law as early as this Sunday, October 26, 2014. (Dreyer Decl. Ex. 4.)

This Court already has held that the spread of state-sponsored sports gambling in New Jersey would

irreparably harm plaintiffs. *Christie*, 926 F. Supp. 2d at 578. Indeed, this Court and the Third Circuit have recognized that the spread of state-sponsored sports gambling "would engender the very ills that PASPA sought to combat." Accordingly, injunctive relief is imperative to prevent the irreparable injury that will occur should the 2014 Sports Wagering Law take effect and defendants or anyone else begin sponsoring, operating, advertising, promoting, licensing, or authorizing sports gambling pursuant to its terms.

Statement of Facts

PASPA Prevents States From Sponsoring, Operating, Advertising, Promoting, Licensing, Or Authorizing Sports Gambling

PASPA was enacted on October 28, 1992, and became effective on January 1, 1993, amid growing public concern over the significant harm that would result from the spread of gambling on amateur and professional sporting events in the United States. With four narrow exceptions not applicable to this case, PASPA makes it unlawful for any "governmental entity to sponsor, operate, advertise, promote, license, or authorize by law or compact"—and any "person to sponsor, operate, advertise, or promote, pursuant to the law or compact of a governmental entity"—any "lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly (through the use of geographical references or otherwise), on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such

athletes in such games." 28 U.S.C. § 3702. PASPA explicitly gives amateur and professional sports organizations, like plaintiffs, standing to seek an injunction for any violation of its provisions. 28 U.S.C. § 3703.

Under the plain terms of PASPA, New Jersey is expressly barred from sponsoring, operating, advertising, promoting, licensing, or authorizing sports-based gambling, and casinos and racetracks within the State are prohibited from engaging in such activities pursuant to state law.

All Gambling Within New Jersey Is Prohibited Unless Specifically Permitted By The New Jersey Constitution

The New Jersey Constitution prohibits any kind of gambling not specifically permitted by that document. *In the Matter of Petition of Casino Licensees*, 268 N.J. Super. At 472. The New Jersey Constitution provides:

> No gambling of any kind shall be authorized by the Legislature unless the specific kind, restrictions and control thereof have been heretofore submitted to, and authorized by a majority of the votes cast by, the people at a special election or shall hereafter be submitted to, and authorized by a majority of the votes cast thereon by, the legally qualified voters of the State voting at a general election . . . .

N.J. Const. Art. IV, § VII, ¶ 2.

The New Jersey Constitution provides certain, narrow exceptions to the foregoing broad prohibition, such as exemptions for state lotteries and charitable contests. *See id.* Relevant to the instant case, the New Jersey Constitution expressly provides that no type of gambling may be conducted in such Atlantic City casinos or gambling houses unless it has been authorized by the Legislature. Specifically, the New Jersey Constitution states:

> It shall be lawful for the Legislature to authorize by law the establishment and operation, under regulation and control by the State, of gambling houses or casinos within the boundaries, as heretofore established, of the city of Atlantic City, county of Atlantic, and to license and tax such operations and equipment used in connection therewith . . . . *The type and number of such casinos or gambling houses and of the gambling games which may be conducted in any such establishment shall be determined by or pursuant to the terms of the law authorizing the establishment and operation thereof.* It shall also be lawful for the Legislature to authorize by law wagering at casinos or gambling houses in Atlantic City on the results of any professional, college, or amateur sport or athletic event, except that wagering shall not be permitted on a college sport or athletic event that takes place in New Jersey or on a sport or athletic event in which any New Jersey college team participates regardless of where the event takes place.

N.J. Const., art. IV, § VII, ¶ 2D (emphases added).

The New Jersey Constitution further permits the Legislature to authorize by law certain forms of gambling at New Jersey racetracks, provided, however, that those activities are under "restrictions and control" of the State:

> It shall be lawful for the Legislature to authorize, by law, the specific kind, restrictions and control of wagering on the results of live or simulcast running and harness horse races conducted within or outside of this State . . . . It shall also be lawful for the Legislature to authorize by law wagering at current or former running and harness horse racetracks in this State on the results of any professional, college, or amateur sport or athletic event, except that wagering shall not be permitted on a college sport or athletic event that takes place in New Jersey or on a sport or athletic event in which any New Jersey college team participates regardless of where the event takes place.

N.J. Const., art. IV, § VII, ¶ 2F.

The New Jersey Constitution, therefore, prohibits any type of gambling, including sports gambling, from being conducted in Atlantic City casinos or New Jersey racetracks unless such gambling is expressly authorized by law and subject to the regulation and control of the State of New Jersey.

This Court Permanently Enjoined New Jersey From Sponsoring, Operating, Advertising, Promoting, Licensing, Or Authorizing Sports Gambling

On January 17, 2012, Governor Christie signed the 2012 Sports Wagering Law, N.J. Stat. 5:12A-1, *et seq.*, which authorized sports gambling at Atlantic City casinos and New Jersey racetracks upon the approval of the New Jersey Division of Gaming Enforcement ("DGE") and, for the racetracks, the New Jersey Racing Commission, and in accordance with applicable regulations promulgated pursuant to the statute. N.J. Stat. 5:12A-2. On August 7, 2012, plaintiffs filed a complaint in this Court against Governor Christie and defendants Rebuck and Zanzuccki (collectively, the "*Christie* defendants") seeking a declaration that the 2012 Sports Wagering Law violated PASPA insofar as it purported to enable the State of New Jersey and its officials to sponsor, operate, advertise, promote, license, and/or authorize sports betting schemes in New Jersey. On August 10, 2012, plaintiffs moved for summary judgment.

On February 28, 2013, this Court granted plaintiffs' motion for summary judgment and permanently enjoined the *Christie* defendants from "sponsoring, operating, advertising, promoting, licensing, or authorizing a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly . . . on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games." *Christie*, 926 F. Supp.

2d at 578-79. On September 17, 2013, the Third Circuit Court of Appeals affirmed the grant of summary judgment and entry of the permanent injunction. 730 F.3d 208 (3d Cir. 2013). On November 15, 2013, the Third Circuit denied New Jersey's petition for a rehearing *en banc*, and on June 23, 2014, the United States Supreme Court denied defendants' petition for a writ of certiorari. 134 S. Ct. 2866 (2014).

Undeterred, The New Jersey Legislature Passes A Bill To Authorize Sports Wagering In Casinos And Racetracks

In May 2014, even before the United States Supreme Court had rejected the *Christie* defendants' petition for a writ of certiorari, Senator Lesniak announced that he had "legislation being drafted and that will be introduced, to allow casinos and racetracks to have sports betting on our premises." (Dreyer Decl. Ex. 5.) According to Senator Lesniak, notwithstanding the judgment of two federal courts, and any action the Supreme Court may take, "we will push the envelope on sports betting [and] we are not going to be deterred." (*Id.*)

On June 23, 2014, the same day that the Supreme Court denied the *Christie* defendants' certiorari petition, Senator Lesniak and others in the Legislature introduced S2250, a bill designed to achieve precisely the same thing as the 2012 Sports Wagering Law that this Court enjoined—authorize sports gambling at state-authorized gambling venues, namely, casinos and racetracks. S2250 attempted to do so by "partially repealing" New Jersey's statutory prohibitions on sports gambling only as to sports wagering in

casinos in Atlantic City and at racetracks across New Jersey. (Dreyer Decl. Ex. 6.) The legislation explicitly stated that it was passed "in response to the decision of the ... Third Circuit." (*Id.*) Three days later, the Legislature passed S2250 without floor debate or other recorded discussion concerning the bill. (Compl., ¶ 37.)

On July 6, 2014, Senator Lesniak explained the purpose of S2250, which was, in essence, the same as the purpose behind the earlier invalidated Sports Wagering Law: "Legalizing sports wagering recognizes the inevitable—that people are going to bet on sports, whether the practice is legal or not, and that we should provide a safe and legal avenue for them to bet on their favorite teams. By mainstreaming sports wagering, we can . . . put it in the regulated hands of existing casino and racetrack operators. And we can create new jobs and new economic opportunities for our ailing gaming establishments." (Dreyer Decl. Ex. 7.)

On August 8, 2014, Governor Christie vetoed S2250, describing the bill as a "novel attempt to circumvent the Third Circuit's ruling" by repealing prohibitions against sports wagering at casinos and racetracks in the State, "[i]n essence . . . partially deregulat[ing] betting at casinos and racetracks in an attempt to sidestep federal law." (Dreyer Decl. Ex. 8.) Noting that the bill was "rushed to final passage," Governor Christie reiterated that he could not support "[i]gnoring federal law" because "the rule of law is sacrosanct, binding on all Americans." (*Id.*)

The Governor's Office Acts To Authorize Sports Wagering

Notwithstanding the governor's apparent disapproval of the Legislature's blatant attempt to circumvent PASPA and this Court's judgment, on September 8, 2014, New Jersey's acting attorney general issued and declared immediately effective a directive to state agencies to stop enforcing existing prohibitions on sports gambling in casinos and racetracks. (Dreyer Decl. Ex. 9.) This directive announced the Executive's newly minted and blatantly atextual position that the provisions of the 2012 Sports Wagering Law that expressly stated that casinos and racetracks "may operate a sports pool"—*i.e.*, the provisions that state officials throughout the *Christie* litigation had touted as authorizing sports betting in New Jersey—were, in fact, not an authorization of sports betting at all, but merely a repeal of existing state prohibitions on sports betting at such venues. (*Id.*) As such, the directive declared, the most critical provisions of the Sports Wagering Law were not invalidated by this Court's injunction or the Third Circuit's decision affirming it, but rather "remain in force and effect." (*Id.*) In light of this novel position, the acting attorney general instructed the Division of Criminal Justice and the Department of Law and Public Safety that they should not object to or seek, either criminally or civilly, to enjoin a sports pool operated by a casino or racetrack, provided that such sports pool does not permit wagering on college sporting events that take place in New Jersey or in which any New Jersey college team participates.

The *Christie* defendants did not ask this Court to sanction this end-run around its permanent injunction beforehand. Instead, they waited until the directive was already issued and declared immediately effective, and only then moved this Court to "clarify" or, alternatively, "modify" its permanent injunction to permit New Jersey's transparent effort to sponsor, operate, advertise, promote, license, and/or authorize sports betting pursuant to the 2012 Sports Wagering Law that this Court had already held preempted by PASPA. Plaintiffs and the United States Department of Justice filed their opposition to the motion on September 29, 2014. Before the *Christie* defendants' reply briefs were due, however, on October 18, 2014, Governor Christie signed the 2014 Sports Wagering Law which, among other things, repealed the 2012 Sports Wagering Law. (Compl. ¶ 44.) The *Christie* defendants then withdrew their pending motion for clarification and/or modification of the permanent injunction. (*Id.*)

New Jersey Passes *Another* Bill To Authorize Sports Wagering In Casinos And Racetracks

The 2014 Sports Wagering Law is New Jersey's latest attempt to accomplish exactly what Congress and this Court have already prohibited it from doing: sponsor, operate, advertise, promote, license, and/or authorize sports betting. The 2014 Sports Wagering Law does so by purporting to "repeal" prohibitions, rules, and regulations on sports gambling, but doing so *only* at Atlantic City casinos and New Jersey racetracks—in other words, only at state-authorized gambling venues already carefully licensed by the State and subject to a whole host of rules and regulations on

the manner in which they may operate. To that end, in addition to repealing the 2012 Sports Wagering Law, the 2014 Sports Wagering Law purports to repeal any rules and regulations at casinos and racetracks that are *specific* to sports gambling. (*See* Dreyer Decl. Ex. 1.)

What the bill does *not* repeal, however, is the requirement of a state license to operate a casino or racetrack, or the scores of rules and regulations with which casinos and racetracks must comply in order to maintain such a license. *See, e.g.*, N.J. Stat. 5:12-96 (casinos may not conduct gaming or remain open without a valid operation certificate from the State); 5:12-100 (only permitting conduct of "authorized games" in casinos); 5:5-50 (establishing obligations for racetracks to obtain permits); 5:5-30 (New Jersey Racing Commission has "full power to prescribe rules, regulations and conditions under which all horse races shall be conducted"); 5:5-63 (New Jersey Racing Commission must approve all pari-mutuel boards or machines that display wagering odds); 5:5-67 (record-keeping requirements for racetracks); 5:12-130 (sanctioning "unlawful acts" by casino licensees); *see generally* N.J.A.C. 13:69-74B (regulations governing casino gambling and horse racetracks).

Nor, tellingly, does the 2014 Sports Wagering Law repeal existing prohibitions on sports gambling with respect to "a collegiate sport contest or collegiate athletic event that takes place in New Jersey or . . . in which any New Jersey college team participates regardless of where the event takes place." This statutory language tracks verbatim the New Jersey Constitution's limitation on the scope of the Legislature's

power "to authorize by law" sports gambling, thus underscoring that the Legislature itself recognized that it was authorizing sports gambling when it enacted the 2014 Sports Wagering Law. N.J. Const., art. IV, § VII, ¶¶ 2D, 2F.

The 2014 Sports Wagering Law also does not (indeed, could not) repeal the New Jersey Constitution provisions prohibiting all types of gambling—and especially all types of gambling at Atlantic City casinos and New Jersey racetracks—unless they are specifically authorized by law and subject to the regulation and control of the State of New Jersey. Once again, this underscores that the Legislature understood that it was not in any sense deregulating sports gambling. On the contrary, the 2014 Law accomplished precisely what its predecessors did: it facilitated sports gambling at state-authorized and state-regulated gambling venues—and at those outposts of state-authorized gambling alone.

In fact, all of the long-standing state prohibitions against wagering remain in place following the State's fictional "repeal" of its wagering laws. In addition to the State's Constitutional prohibitions against wagering remaining, all of the State's civil prohibitions against gambling remain intact. *See, e.g.*, N.J. Stat. 2A:40-1 ("All wagers, bets or stakes made to depend upon any race or game, or upon any gaming by lot or chance, or upon any lot, chance, casualty or unknown or contingent event, shall be unlawful."). Likewise, all of the State's criminal prohibitions against gambling remain unchanged. *See, e.g.*, N.J. Stat. 2C:37-2 (prohibiting promotion of gambling).

Thus, the State has hardly "repealed" any of its myriad anti-gambling laws, or even a single part of those laws. Rather, the State has merely exempted from these laws two, narrow groups: state-licensed casinos and state-licensed racetracks, all in a clear effort to authorize and promote sports wagering that is authorized and regulated by the State. Indeed, the bill's sponsors have made clear that the 2014 Sports Wagering Law is intended to authorize and promote sports wagering in Atlantic City casinos and New Jersey racetracks. Senator Lesniak stated that the purpose of the 2014 Sports Wagering Law is the same as that of the 2012 Sports Wagering Law: "Sports betting will be a lifeline to the casinos, putting people to work and generating economic activity in a growth industry." (Dreyer Decl. Ex. 3.) Speaking about the new law prior to the governor's signature, Senator Lesniak said, "We are a short step away from getting this done and a lot closer to bringing sports betting to New Jersey." (Dreyer Decl. Ex. 10.) He explained that "[i]t's been a long, tough effort and we've gone up against powerful interests, but now there is an urgency because sports gaming will be a lifeline to the Atlantic City casino industry at a critical time. It will produce jobs, generate economic activity and be a long-term benefit to New Jersey. I urge the governor to sign it into law as fast he can." (*Id.*) "I have new legislation," Senator Lesniak explained, "very similar to the one [Governor Christie] vetoed. I believe he'll sign it this time and we'll soon be up and running and be able to take sports bets and bring some life into Atlantic City and our racetracks and bring those jobs back." (Dreyer Dec. Ex. 11.) "We'd only be doing in New Jersey what they are doing in Nevada." (Dreyer Decl. Ex. 12.)

These sentiments about the 2014 Sports Wagering Law have been echoed by Senator Lesniak's colleagues. Assemblyman Ralph Caputo stated: "This would be a tremendous boost and a historic move for the state of New Jersey to permit that kind of activity here." (Dreyer Decl. Ex. 10.) "We want to give the racetracks a shot in the arm. We want to help Atlantic City. We want to do something for the gaming business in the state of New Jersey, which has been under tremendous duress from the closings, which occurred down in Atlantic City." (Dreyer Decl. Ex. 2.) Senator Jim Whelan expressed the same view: "Gaming will always be an important part of our attractions and sports betting will expand on it. This is good for Atlantic City, for the casino industry and the state." (Dreyer Decl. Ex. 13.)

"Sports betting can assist New Jersey's struggling casino industry and with our challenges at Monmouth Park Racetrack," Senator Joseph M. Kyrillos, another of the bill's sponsors, said prior to the governor's signature. (Dreyer Decl. Ex. 10.) "Both houses of the Legislature acted quickly to approve this critical measure and I am confident Governor Christie will join our efforts to help protect Atlantic City and Monmouth Park jobs by signing the bill into law." (*Id.*)

State-Owned Monmouth Park Racetrack's Immediate Plans To Commence Sports Wagering Pursuant To The 2014 Sports Wagering Law

Within hours of Governor Christie's signing of the 2014 Sports Wagering Law, Monmouth Park Racetrack announced that it will "begin offering and

accepting wagers on sporting contests and athletic events on Sunday, Oct. 26 at the racetrack." (Dreyer Decl. Ex. 4.)[2] Monmouth Park Racetrack is owned by defendant NJSEA, which is a legislatively created "instrumentality of the State exercising public and essential governmental functions." N.J. Stat. 5:10-4(a). Revenue derived from the NJSEA "shall be deemed and held to be applied in support of government." *Id.* Accordingly, any sports wagering at Monmouth Park (or the NJSEA-owned Meadowlands Racetrack) would violate the provisions of PASPA that prohibit a State from directly sponsoring, operating, promoting, or advertising sports wagering, regardless of the auspices under which such facilities claim authority to do so.

Argument

*A. Plaintiffs Are Entitled To A Temporary Restraining Order And Preliminary Injunction Pursuant to Rule 65(b)***

The primary purpose of temporary or preliminary injunctive relief is to preserve the status quo until a decision on the merits can be rendered. *See Kos Pharm., Inc. v. Andrx Corp.*, 369 F.3d 700, 708 (3d Cir.

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[2] When plaintiffs informed the *Christie* defendants that they intended to seek a temporary restraining order against the acting attorney general's directive, the attorney general's office secured written assurances from each Atlantic City casino and New Jersey racetrack that it would not operate a sports wagering pool for 45 days (*i.e.*, until October 25, 2014). (Dreyer Decl. ¶ 23.) The operator of the Monmouth Park racetrack, however, has made his intentions clear: Monmouth Park intends "to start sports betting on the 46th day, unless a judge tells me I can't." (Dreyer Decl. Ex. 14.)

2004); *Opticians Ass'n of Am. v. Indep. Opticians of Am.*, 920 F.2d 187, 197 (3d Cir. 1990) (reversing denial of preliminary injunction); *Fed'n of State Massage Therapy Boards v. Academy of Oriental Therapy, LLC*, No. 3:13-cv-06317, 2013 WL 5888094, at *1 (D.N.J. Oct. 28, 2013) (granting temporary restraining order). The "status quo" refers to "the last, peaceable, noncontested status of the parties." *Kos Pharm., Inc.*, 369 F.3d at 708 (quoting *Opticians Ass'n of Am.*, 920 F.2d at 197).

The standard for granting a temporary restraining order is the same as that for granting a preliminary injunction. *Fed'n of State Massage Therapy Boards*, 2013 WL 5888094, at *1. A temporary restraining order and preliminary injunction, therefore, should be granted when (i) the movant shows a reasonable likelihood of success on the merits, (ii) the movant demonstrates he is likely to suffer irreparable harm in the absence of preliminary relief, (iii) the harm to the moving party outweighs the harm to the non-moving party, and (iv) granting preliminary relief is in the public interest. *New Jersey Retail Merchs. Ass'n v. Sidamon-Eristoff*, 669 F.3d 374, 385-86 (3d Cir. 2012); *see also Neo Gen Screening, Inc. v. Telechem Int'l, Inc.*, 69 F. App'x 550, 554 (3d Cir. 2003); *Ballas v. Tedesco*, 41 F. Supp. 2d 531, 538 (D.N.J. 1999).

Here, there is no question that the status quo would be fundamentally altered if pursuant to the 2014 Sports Wagering Law, Atlantic City casinos and New Jersey racetracks began offering sports betting—an activity that has never been permitted in New Jersey. Indeed, the proponents of the law made plain

their intent to fundamentally alter the status quo by ushering in lawful sports gambling into New Jersey's state-authorized gambling venues for the very first time. There is also no question that if the conduct challenged here likely violates PASPA, then a temporary restraining order and/or preliminary injunction should issue, as both this Court and the Third Circuit already have concluded that plaintiffs would be irreparably injured by sports gambling on their own games that violates PASPA, and that the balance of hardships and the public interest weigh decidedly in favor of enjoining violations of PASPA. Accordingly, the only real question is whether plaintiffs have demonstrated a reasonable likelihood of success on the merits of their arguments that the conduct challenged here is yet another violation of PASPA. Because they clearly have, this Court should enter an order to prevent casinos and racetracks from rushing to begin offering sports gambling pursuant to 2014 Sports Wagering Law before this Court can even determine whether that law violates PASPA or the New Jersey Constitution.

1. Plaintiffs Have A Reasonable Likelihood Of Success On The Merits

a) The 2014 Sports Wagering Law Violates PASPA

As this Court is well aware, PASPA prohibits any governmental entity from sponsoring, operating, advertising, promoting, licensing, or authorizing sports gambling, sports wagering, or a sports lottery. 28 U.S.C. § 3702(1); *accord Christie*, 926 F. Supp. 2d at 577-79. As both this Court and the Third Circuit have

recognized, this does not mean that states must "enact or carry out" prohibitions on sports gambling. 730 F.3d at 237. But it does mean that they must choose between prohibiting sports gambling or "accepting [its] complete deregulation." *Id.* They may not choose half-measures that purport to "repeal" prohibitions, but do so only at state-authorized gambling venues with the inevitable and intended effect of producing state-regulated sports gambling. For instance, if a state put into place a complete regulatory scheme for all forms of gambling that are not expressly prohibited coupled with an express prohibition on sports gambling, it should be obvious that the State could not repeal that prohibition without producing state-sponsored gambling. After all, it is the substance, not the form, of state laws that govern a preemption analysis. *See, e.g., Aetna Health Inc. v. Davila*, 542 U.S. 200, 214-15 (2004) (states may not "elevate form over substance ... to evade" federal preemption).

That is precisely what New Jersey has done here. Although the 2014 Sports Wagering Law purports to be nothing more than a "repeal" of existing prohibitions on sports gambling, that is just word play. All of the State's long-standing criminal and civil prohibitions against gambling remain intact. *See, e.g.*, N.J. Stat. 2A:40-1 ("All wagers, bets or stakes made to depend upon any race or game, or upon any gaming by lot or chance, or upon any lot, chance, casualty or unknown or contingent event, shall be unlawful."); N.J. Stat. 2C:37-2 (prohibiting promotion of gambling). The only thing the 2014 Sports Wagering Law does is provide an exemption from these generally-applicable prohibitions for Atlantic City casinos and New Jersey

racetracks—the very venues at which all gambling operations *already* are subject to a vast state regulatory scheme. To provide an exemption from such general prohibitions only at state-authorized gambling venues is to authorize sports gambling at those venues.

Casinos and racetracks already are required, for instance, to obtain (and pay the State for) a license to operate, and to comply with scores of rules in order to maintain such a license. *See, e.g.*, N.J. Stat. 5:12-96 (casinos may not conduct gaming or remain open without a valid operation certificate from the State); 5:12-100 (only permitting conduct of "authorized games" in casinos); 5:5-50 (establishing obligations for racetracks to obtain permits); 5:5-30 (New Jersey Racing Commission has "full power to prescribe rules, regulations and conditions under which all horse races shall be conducted"); 5:5-63 (New Jersey Racing Commission must approve all pari-mutuel boards or machines that display wagering odds); 5:5-67 (record-keeping requirements for racetracks); 5:12-130 (sanctioning "unlawful acts" by casino licensees); *see generally* N.J.A.C. 13:69-74B (regulations governing casino gambling and horse racetracks). The 2014 Sports Wagering Law does not purport to repeal any of these preexisting regulatory requirements; instead, it simply clears the way for their application to sports gambling as well. By enabling sports gambling to occur only at establishments that must be licensed and regulated by the State, the 2014 Sports Wagering law directly conflicts with the federal policy embodied in PASPA. As the Third Circuit observed: "PASPA makes clear that the federal policy with respect to sports gambling is that such activity should not occur

under auspices of a state license." *Christie*, 730 F.3d at 236.

The 2014 Sports Wagering Law achieves precisely the same end as the 2012 Sports Wagering Law that this Court enjoined as a blatant violation of PASPA. As New Jersey explained in defending that law before the Third Circuit, it was designed to "channel[] sports wagering activity into the *closely regulated* gaming infrastructure New Jersey *already has* in its casinos and race-track," "where it can be monitored, regulated, and appropriately taxed." (NJ Opening Third Cir. Brief (emphasis added)); *see also id.* (2012 Sports Wagering Law will "allow[] *State-regulated* casinos and racetracks to operate legal, regulated, transparent, and taxable sports books" (emphasis added)). By "repealing" existing prohibitions *only* at these "closely" "State-regulated" venues, New Jersey has accomplished exactly what this Court already has concluded federal law prohibits it from doing: authorizing sports gambling that is licensed and regulated by the State.[3]

Indeed, the Legislature itself recognized that the 2014 Sports Wagering Law is really just an authorization in disguise when it made sure to clarify that the law does not repeal existing prohibitions on sports

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[3] Although the 2014 Sports Wagering Law eliminates the language the 2012 Sports Wagering Law added that expressly *includes* revenues from sports wagering in a casino's taxable revenues, the law does not *prohibit* the State from including those revenues in its tax calculations. It is accordingly unclear at this point whether New Jersey believes it may collect taxes on this activity that it purports not to be "licensing" or "authorizing."

gambling with respect to "a collegiate sport contest or collegiate athletic event that takes place in New Jersey or . . . in which any New Jersey college team participates regardless of where the event takes place." (Dreyer Decl. Ex. 1 § 1.) That language, which tracks verbatim the New Jersey Constitution's limitation on the scope of the legislature's power "to authorize by law" sports gambling, N.J. Const., art. IV, § VII, ¶¶ 2D, 2F, would have been wholly unnecessary if the Legislature were washing it hands of sports gambling altogether, rather than exercising its constitutional power to *authorize* it.

In short, notwithstanding New Jersey's legislators self-serving statements to the effect that they *intend* the 2014 Sports Wagering Law—as they did with its vetoed predecessor, S2250—to comport with the Third Circuit's decision in *Christie*, it is clear that the law does no such thing. The Third Circuit held that "PASPA gives states the choice of either implementing a ban on sports gambling or accepting *complete deregulation of that field*." 730 F.3d at 235 (emphasis added). It did not hold that states that may choose some novel amalgam of the two, under which a state may lift a prohibition on sports gambling only at state-authorized gambling venues and disclaim that it has just authorized sports gambling at those venues (while celebrating the economic benefits that will now flow to those venues).

b) The 2014 Sports Wagering Law Cannot Avoid A Problem Under PASPA Without Running Into A Problem Under The New Jersey Constitution

The conclusion that the 2014 Sports Wagering Law is an attempt to license and authorize, not deregulate, sports gambling also is compelled by the New Jersey Constitution. As previously noted, gambling in New Jersey has been legalized cautiously, such that no gambling may be conducted in the State unless it is permitted by the State's Constitution. And no gambling is permitted under the State's Constitution unless it has been authorized by law by the Legislature. N.J. Const. art. IV, § VII, ¶ 2; *In the Matter of Petition of Casino Licensees*, 268 N.J. Super. 469, 472 (App. Div.), *aff'd*, 138 N.J. 1 (1993). Moreover, no gambling may be conducted in Atlantic City casinos unless that gambling has been specifically authorized by law. N.J. Const. art. IV, § VII, ¶ 2D. Thus, under the clear provisions of the New Jersey Constitution, the Legislature and the governor are powerless to permit any form of gambling in Atlantic City casinos unless it is specifically "authorized by law."

New Jersey courts, like all others, recognize a "strong presumption of constitutionality," and will construe a statute in a manner that sustains its constitutionality if possible. *In the Matter of Village of Loch Arbour*, 25 N.J. 258, 264-65 (N.J. 1957). Accordingly, the New Jersey Constitution is all the more reason to construe the 2014 Sports Wagering Law as authorizing by law sports wagering in Atlantic City casinos and New Jersey racetracks. The law's disclaimer that it is "not intended and shall not be construed as

causing the State to sponsor, operate, advertise, promote, license, or authorize" sports gambling, (Dreyer Decl. Ex. 1, § 2.), in no way prohibits that conclusion, as this transparent attempt to evade PASPA can no more control the State constitutional question than it can the federal preemption question. But if the 2014 Sports Wagering Law really does clear the way for wholly unauthorized, unlicensed, and unregulated sports, the people of New Jersey have rejected the idea of wholly unauthorized and unregulated gambling, and the United States Congress has just as squarely rejected the idea of state-authorized sports gambling. New Jersey's effort to thread the needle therefore cannot succeed: the 2014 Sports Wagering Law necessarily violates either PASPA or the New Jersey Constitution.

c) NJTHA's Offering Of Sports Wagering At State-Owned Monmouth Violates PASPA

As noted above, in addition to making it unlawful for any "governmental entity to sponsor, operate, advertise, promote, license, or authorize by law or compact" any sports wagering, PASPA makes it unlawful for any "person to sponsor, operate, advertise, or promote" sports wagering "pursuant to the law or compact of a governmental entity." 28 U.S.C. § 3702(2). Accordingly, because the 2014 Sports Wagering Law violates PASPA, no casino or racetrack, including Monmouth Park, may sponsor, operate, advertise, or promote sports betting pursuant to it without violating PAPSA as well.

Monmouth Park also may not sponsor, operate, advertise, or promote sport gambling for an additional reason: because it is owned by NJSEA, a governmental entity. Section 3702(1) does not just make it unlawful for a state to license or authorize gambling; it also makes it unlawful for the *State itself* to sponsor, operate, advertise, or promote gambling. In other words, it prohibits the State from acting as a market participant in sports gambling—regardless of whether the State purports to do so under a law that violates PASPA's other restrictions. Accordingly, as a governmental entity, the NJSEA is expressly prohibited from sponsoring or licensing sports wagering schemes. *Id.* § 3702(1). Moreover, because the NJSEA licenses the operations of Monmouth Park to the NJTHA, the NJTHA would likewise violate PASPA if Monmouth Park operating sports betting, as that sports betting would be "pursuant to ... [a] compact" with "a governmental entity." *Id.* § 3702(2).

2. Plaintiffs Will Suffer Irreparable Harm If A Temporary Restraining Order And Preliminary Injunction Are Not Granted

There can be no serious dispute that the 2014 Sports Wagering Law threatens plaintiffs with imminent, irreparable injury. As this Court previously concluded, plaintiffs are injured by "the negative effect" that state-sanctioned sports gambling on their own games "would have upon the perception of the[ir]

games and their relationship with their fans." *Christie*, 2012 WL 6698684, at *4.[4] The Third Circuit agreed, finding that there is a "proven stigmatizing effect of having sporting contests associated with gambling, a link that is confirmed by commonsense and Congress' own conclusions" in PASPA. 730 F.3d at 224.

This stigmatizing effect, moreover, is by its very nature irreparable. *See, e.g., Cellco P'ship v. Hope*, 469 F. App'x 575, 577 (9th Cir. 2012) ("[e]vidence of threatened loss of prospective customers or goodwill certainly supports a finding of the possibility of irreparable harm") (quoting *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 841 (9th Cir. 2001)); *Dominion Video Satellite, Inc. v. Echostar Satellite Corp.*, 269 F.3d 1149, 1157 (10th Cir. 2001) (holding plaintiff suffered irreparable injury because "no remedy could repair the damage to [plaintiff s] reputation and credibility"); *BP Chems. Ltd. v. Formosa Chem. & Fibre Corp.*, 229 F.3d 254, 263 (3d Cir. 2000) (damage "to BP's reputation, credibility and ability to license its technology if FCFC's plant became operational, giving rise to the public perception that BP was unable to protect its proprietary trade secrets," constituted irreparable injury); *Pappan Enters., Inc. v. Hardee's Food Sys., Inc.*, 143 F.3d 800, 805 (3d Cir. 1998) ("Grounds for irreparable injury include loss of

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[4] Indeed, plaintiffs produced substantial evidence in the Christie case of the harms that would result from the operation of sports gambling in New Jersey. (*See, e.g., Christie* Dkt 95-2, at 36-37 (Stmt. No. 39); 58-63 (Stmt. No. 74); 63-72 (Stmt. Nos. 76-79).)

control of reputation, loss of trade, and loss of goodwill.").

Because the whole point of PASPA's prohibitions is to protect plaintiffs from these irreparable injuries, any gambling on their games in violation of PAPSA necessarily constitutes irreparable injury warranting injunctive relief. *See Christie*, 926 F. Supp. 2d at 578 ("the spread of sports gambling would engender the very ills that PASPA sought to combat"); *Kansas Health Care Ass'n v. Kansas Dep't of Soc. & Rehab. Servs.*, 31 F.3d 1536, 1543 (10th Cir. 1994) ("injury to [plaintiffs] resulting from [Kansas's] noncompliance with the [federal statute]" constituted irreparable injury); *New Jersey Coal. of Auto Retailers v. DaimlerChrysler Motors Corp.*, 107 F. Supp. 2d 495, 500 (D.N.J. 1999) (loss of dealers' statutory rights constituted irreparable injury). Indeed, PASPA gives plaintiffs the right to seek injunctive relief against gambling on their games precisely because, in this context, monetary relief will not suffice. 28 U.S.C. § 3703. Irreparable harm is, by definition, harm that cannot be compensated by monetary damages. *See Opticians Ass'n of Am.*, 920 F.2d at 195. Where, as here, "an injunction is the only relief available to a private party under the Act, it would be an abuse of discretion for the district court now to deny injunctive relief" *Antoninetti v. Chipotle Mexican Grill, Inc.*, 643 F.3d 1165, 1175 (9th Cir. 2010).

In short, as this Court already has concluded, plaintiffs will suffer irreparable harm should sports betting on their own games in violation of PASPA occur. Accordingly, the second prong of the test for the

issuance of a temporary restraining order and preliminary injunction is readily satisfied.

3. The Balance Of Equities Favors Issuing A Temporary Restraining Order And Preliminary Injunction

As this Court also already has concluded, the balance of "the relative harm to the parties, *i.e.*, the potential injury to the plaintiff if an injunction does not issue versus the potential injury to the defendant if the injunction is issued," *Novartis Consumer Health, Inc. v. Johnson & Johnson-Merck Consumer Pharms. Co.*, 290 F.3d 578, 596 (3d Cir. 2002), weighs decidedly in favor of plaintiffs here. Indeed, when the only "hardship" to a defendant is that it comply with PASPA, there is no legally cognizable hardship to the defendant at all. 926 F. Supp. 2d at 578 (holding balance of hardships weighs in favor of the Court entering injunction because "no hardship will befall [a defendant when] [i]n essence, the entrance of a[n] . . . injunction will do nothing more than require that [defendant] comply with federal law"); *see also Sierra Club v. Franklin Cnty. Power of Ill., LLC*, 546 F.3d 918, 936 (7th Cir. 2008) (balance of hardships favors injunction when injunction required defendant to comply with the Clean Air Act); *Coach Inc. v. Fashion Paradise, LLC*, No. 10-4888, 2012 WL 194092, at *9 (D.N.J. Jan 20, 2012) (balance of hardships favored injunction where "[t]he only hardship imposed upon the Defendants is that they obey the law").

By contrast, plaintiffs will suffer significant and irreparable harm, as described above, if Atlantic City casinos and New Jersey racetracks begin taking bets

on sporting events before this Court can even determine whether New Jersey's latest attempt to authorize them to do so is lawful. The balance of hardships in this case therefore clearly weighs in favor of plaintiffs and supports the issuance of a temporary restraining order and preliminary injunction.

4. Granting A Temporary Restraining Order And Preliminary Injunction Is In The Public Interest

Finally, enjoining defendants from violating PASPA will serve the public interest. As this Court previously concluded, "[t]he public interest is favored by protecting valid federal statutes from being infringed upon." 926 F. Supp. 2d at 578; *see also* 11A Charles Alan Wright, et al., *Federal Practice and Procedure* § 2948.4 (2d ed. 1995) ("A federal statute prohibiting the threatened acts that are the subject matter of the litigation has been considered a strong factor in favor of granting a preliminary injunction."); *Garden State Equality v. Dow*, 433 N.J. Super. 347, 363 (N.J. Super. 2013) (recognizing no public interest in a state's ability to enforce an unconstitutional law). And, where, as here, plaintiffs have demonstrated a strong likelihood of success on the merits, "the public interest leans even more toward granting the injunction." *Novartis Consumer Health*, 290 F.3d at 597; *see also American Tel. & Tel. Co. v. Winback & Conserve Program, Inc.*, 42 F.3d 1421, 1427 n.8 (3d Cir. 1994) ("As a practical matter, if a plaintiff demonstrates both a likelihood of success on the merits and irreparable injury, it almost always will be the case that the public interest will favor the plaintiff."). Finally, given

the clear shift from the status quo ante that the legislation seeks to achieve, the public interest would hardly be served by allowing sports gambling to begin for the first time only to have it halted once its incompatibility with PASPA and this Court's injunction is confirmed.

There can be no serious dispute after the last round of litigation that PASPA is a "valid federal statute." *See* 926 F. Supp. 2d at 562-77 (rejecting defendants' constitutional challenges to PAPSA); 730 F.3d at 224-40 (same). And in enacting PASPA, Congress recognized a strong public interest in protecting sports from the harms associated with gambling. *See* S. Rep. No. 102-248, at 4 (noting that PASPA "serves an important public purpose, to stop the spread of State-sponsored sports gambling."); *id.* at 5 ("Sports gambling threatens to change the nature of sporting events from wholesome entertainment for all ages to devices for gambling.") Congress also specifically rejected the notion that a state's interest in boosting its economy is sufficient to outweigh the public's interest in preventing the spread of state-sponsored sports wagering. *See id.* at 7 ("The answer to State budgetary problems should not be to increase the number of lottery players or sports bettors, regardless of the worthiness of the cause. The committee believes the risk to the reputation of one of our Nation's most popular pastimes, professional and amateur sporting events, is not worth it."). Because the whole point of PASPA is to further these important public purposes, it is in the public's interest to enforce PASPA and prevent the spread of state-sponsored sports wagering.

Accordingly, the public interest is best served by granting plaintiffs' request for a temporary restraining order and preliminary injunction and requiring defendants to act within the bounds of federal law.

B. No Bond Should Be Required

The Court has discretion in whether to require a security bond in conjunction with the issuance of a temporary restraining order and may dispense with the requirement altogether when there is no likelihood of harm to the defendants. *Temple Univ. v. White*, 941 F.2d 201, 219-220 (3d Cir. 1991) (recognizing that under certain circumstances the bond requirement under Rule 65(c) could be waived); *Doctor's Assocs., Inc. v. Distajo*, 107 F.3d 126, 136 (2d Cir. 1997) (affirming district court's decision not to require bond). Because there is no likelihood of cognizable harm to defendants from the issuance of the requested temporary restraining order, no bond should be required.

C. The Prior Injunction Should Be Enforced Against The Christie Defendants

The *Christie* defendants cannot dispute that this Court entered a valid injunction order against them to enjoin them from "sponsoring, operating, advertising, promoting, licensing, or authorizing a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly . . . on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games." *Christie*, 926 F. Supp. 2d at 578-79. Because

the direct effect of the 2014 Sports Wagering Law is to promote gambling on professional and amateur sporting events and to authorize New Jersey casinos and racetracks to engage in such activity, the *Christie* defendants have directly violated this Court's order by implementing and/or enforcing that law, and sponsoring, operating, advertising, promoting, licensing, and/or authorizing sports gambling pursuant to it. Plaintiffs respectfully request that, pursuant to Fed. R. Civ. P. 70, this Court declare that in taking those actions, the *Christie* defendants have violated the Court's order, and further ask the Court to take all other steps necessary to enforce its injunction.

Conclusion

For the foregoing reasons, plaintiffs respectfully request this Court to issue a temporary restraining order and preliminary injunction (i) enjoining defendants from giving effect to the 2014 Sports Wagering Law or taking any other action to sponsor, operate, advertise, promote, license or authorize by law or compact the implementation of any sports gambling in violation of PASPA, the New Jersey Constitution, or otherwise and (ii) enjoining defendants from permitting any individual or entity subject to their authority to engage in such activity. Plaintiffs further request this Court to enforce this Court's previous injunction against the *Christie* defendants.

Dated: October 21, 2014

Respectfully Submitted,

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September 30, 2014

Sports leagues continue push against N.J. wagering; lawmaker hones bill to permit it

A bettor watches a jockey practice before a race at Freehold Raceway in Freehold, New Jersey. A new bill aims to allow sports wagers on professional games at the state's casinos and race tracks. (AP file photo)

By *Phil Gregory*

As professional sports leagues attempt to block New Jersey from allowing sports betting, a state lawmaker is proposing new legislation he hopes will make it reality.

Sen. Ray Lesniak said his bill would repeal any laws in New Jersey that prohibit sports betting at casinos and racetracks.

"Sports leagues and the Justice Department say we have to repeal our laws, and then we're free to start taking bets," he said. "And that's what it does."

Saying it "certainly will pass both houses in a heartbeat," Lesniak, D-Union, said he believes the measure will be enacted within a couple of weeks- and that Gov. Chris Christie will sign it.

His bill addresses a Christie administration concern by prohibiting anyone under 21 from making a sports wager.

Assembly Gaming and Tourism Committee chairman Ralph Caputo said Tuesday he anticipates his committee will advance the bill this week.

"We want to give the racetracks a shot in the arm. We want to help Atlantic City. We want to do some-

thing for the gaming business in the state of New Jersey, which has been under tremendous duress from the closings, which occurred down in Atlantic City," said Caputo, D-Essex. "So this is a good move."

The NCAA and professional leagues have complained the state's efforts are a legal end-run around federal law prohibiting sports betting in all but four states.

Kyrillos and Lesniak Fast Track Sports Betting Legislation

Sen. Joe Kyrillos

Senators Joe Kyrillos (R-Monmouth) and Ray Lesniak have teamed up to sponsor legislation that will counter the professional sports leagues latest attempts to block sports betting in New Jersey.

The bill, which will be introduced during the Senate's next session, would explicitly abolish language in state law that prohibits sports betting, a move that would reinforce the state attorney general's effort to lift the injunction preventing the state from moving forward on plans to allow casinos and racetracks to accept wagers on sporting events. The measure would also prohibit the transport of sports-betting equipment across state lines and set an age requirement of 21 years old.

Last month acting Attorney General John Hoffman issued a directive that instructed law enforcement not to prosecute sports betting at racetracks and casinos. The Christie Administration asked U. S. District Judge Michael Shipp to rule that New Jersey is not violating federal law by decriminalizing sports betting and allowing private entities to operate and regulate the betting.

The four major sports leagues and the NCAA opposed the Christie Administration's motion, claiming that "The ... authorization of sports gambling in New Jersey would irreparably harm amateur and professional sports by fostering suspicion that individual plays and final scores of games may have been influenced by factors other than honest athletic competition."

Removing the state law prohibiting sports betting from the books will give New Jersey's legal position

more authority and will help withstand any more challenges, Lesniak said.

"The Atlantic City casino closings and job losses underscore the importance of getting this done as soon as possible," said Senator Lesniak. "Sports betting will be a lifeline to the casinos, putting people to work and generating economic activity in a growth industry."

"The horseracing industry is more than a business for New Jersey, it is a key part of our way of life," said Senator Kyrillos. "The racetracks provide jobs and economic activity, but they also support horse farms and

open space. Sports wagering is a natural fit with the racetracks."

The bill is modeled after the Lesniak-sponsored measure vetoed by the governor before Senator Lesniak developed the legal strategy of removing the state ban. Senator Lesniak identified the opinion by the Federal Court's Third Circuit was an "open invitation" for New Jersey because it stated that it would not violate the federal ban on sports betting since that ban only applies to "state authorized" wagers.

Monmouth Park - The Shore' s Greatest Stretch

News

Monmouth Park to Start Sports Betting October 26

Friday, October 17, 2014

Oceanport, N.J. - Monmouth Park Racetrack will begin offering and accepting wagers on sporting contests and athletic events on Sunday, Oct. 26 at the racetrack.

"We thank Governor Christie for his leadership on this issue," said Dennis Drazin, advisor to Darby Development LLC, operators of Monmouth Park.

"The New Jersey horse racing industry and the associated agriculture support services is a $1 billion industry and is responsible for 13,000 jobs in the Garden State, as well as the open spaces and green acres that are the direct result of horse racing," Drazin said. "The Governor's signature on S2460 earlier today is a wire-to-wire winner for horse racing, the gaming industry and the people of New Jersey."

In 2011, Garden State voters made it clear that they no longer wanted New Jersey laws that made it illegal to engage in sports betting at Atlantic City casinos and at New Jersey racetracks. After two years of litigation in the federal courts, a definitive interpretation as to the scope and meaning of the Professional and Amateur Sports Protection Act (PASPA) was handed down. In that decision, the Court stated that it does "not read PASPA to prohibit New Jersey from repealing its ban on sports wagering." The Court went on to state that "it is left up to each state to decide how much of a law enforcement priority it wants to make

of sports gambling, or what the exact contours of the prohibition will be."

Following a vote in the New Jersey Senate of 27-1 on Oct. 14 and in the General Assembly of 73-4, the Governor affixed his signature to S2460, thus paving the way for sports betting at Atlantic City casinos and New Jersey's racetracks to commence immediately.

"I want to express our thanks and gratitude to the entire New Jersey Legislature," said Drazin. "Particularly to Senator Lesniak, who has championed this cause from the onset and Assemblyman Caputo, who led the legislation through the Assembly. Also, the tireless work of Senators Kyrillos, Beck and Whelan as well as Assemblymen Dancer, Burzichelli, Mazzeo and Mukherji have brought us to where we are today. We can't wait to welcome new fans to the racetrack as we embark on this exciting new era in the long and storied history of Monmouth Park."

NorthJersey.com

NJ Sen. Lesniak to create sports betting bell for racetracks, casinos

May 19, 2014

BY JOHN BRENNAN

STAFF WRITER, THE RECORD

State Sen. Ray Lesniak, D-Union, on Monday announced at the East Coast Gaming Conference in Atlantic City that he is preparing a bill to allow for private operation of sports betting at the state's racetracks and casinos - threatening to call the bluff of the federal government regarding sports betting.

Lesniak spearheaded legalization of online gaming in the state as well as its challenge of a federal law now negating the state's sports betting law. He said he will move forward on the bill in the Legislature should the U.S. Supreme Court decline to hear the slate's case next month.

"Right now, book your hotel room [in Atlantic City]] for the Super Bowl next year and the NCAA Final Four, because you won't be able to get one," Lesniak declared. We are going to have sports betting in New Jersey next year. Go to the bank on it. because if the [Supreme Court takes the case], it will be overturned.

"And if it isn't, it's the position of the Justice Department in their briefs that they are not stopping states," but telling those states they're free to stop preventing such betting without officially sponsoring it, he added, "I have legislation being drafted, and that will be introduced, to allow casinos and racetracks, to have sports betting on our premises. We just won't be

able to regulate it. We pushed the envelope with internet gaming, and we will push the envelope on sports betting. And we are not going to be deterred."

The U.S. Department of Justice is defending the legality of the Professional and Amateur Sports Protection Act of 1992 (PASPA) that bars slate-sponsored betting in all but four states. Last week it reiterated its contention that the law is not unconstitutional because it merely prevents the sort of state-sponsored sports betting that New Jersey's current state law is meant to offer.

The federal government and the NCAA, the NFL, and three other professional sports leagues last year prevailed at the U.S. District Court and Third Circuit Court of Appeals levels. That has led Governor Christie to make a final appeal for the U.S. Supreme Court to hear the ease – a decision that likely would be made next month.

But Lesniak's bill would keep the issue on the front-burner even if the nation's highest court. declines to hear the case.

At the Third Circuit court in Philadelphia last June, U.S. Attorney Paul Fishman argued the federal government's case. Fishman, stressing the point that the PASPA law is not an example of prohibited "commandeering" of state conduct, noted that New Jersey officials could, if they chose to, announce that the state would no longer enforce its sports betting laws,

"It would be a really, really had idea," Fishman said, but it would not be prohibited by the 1992 sports betting law that allows only Nevada and three other states to offer sports betting.

The Department of Justice's most recent filing contends that even if the court questioned the federal

law's prohibition against sports betting, that law also prohibits private operators from offering such gambling. The state has countered that if the main provision is not legitimate, the entire law tear need to be struck down.

Meanwhile, New Jersey's somewhat uneven results for online gaming since it was legalized last November was defended by numerous industry experts.

Richard Schuetz, chairman of the California Gambling Control Commission, said that criticism of the state's results was like parents complaining that their 5-month-old baby "doesn't speak any languages."

Gaming law attorney Jeff Ifrah later continued the theme: "This baby is walking and talking, and is going be doing that very well for the rest of its life."

Borgata CEO Tom Ballance said that New Jersey's nine-month journey from legalization to going live with online gaming is "like trying to paint an airplane while it's flying."

State Division of Gaining Enforcement Director David Rebuck said: "Internet gaming exists in all 50 states. It's just unregulated" in 47 of them, with only New Jersey, Nevada and Delaware offering a legal version of the betting.

Sen. Raymond J. Lesniak/ Sports betting fight must continue

Posted 3 months ago

The fight to bring sports betting to New Jersey has been long and challenging, complete with obstacles and strong resistance, primarily from the well-financed and powerful efforts of the professional sports organizations, the NCAA and casino operators in other states who have an interest in preserving the status quo. We have encountered setbacks in the courts, political opposition and the army of lobbyists employed by those who don't want to allow New Jersey to establish a sports betting industry that is profitable to the gaming industry already in place in Atlantic City and at our racetracks.

Some have gotten discouraged by the protracted effort and some have given up the fight. I haven't. I continue to pursue what some now consider a "Quixotic quest" to make sports betting legal in New Jersey because I believe we should have the legal right and because it will be good for the struggling casinos, good for Atlantic City's future and good for New Jersey's economy. It will bring jobs, more commerce and economic activity.

Measuring the financial activities that surround some of our biggest sporting events provides evidence of the benefits that could be drawn to Atlantic City. The Super Bowl, the Final Four and even World Cup soccer generate a level of fan interest and sports wagering that could be a game-changer for Atlantic City. During these sporting events, you can't get a room in a Las Vegas hotel where sports betting is allowed, but Atlantic City is a ghost town. This is a $500 billion-a-year industry, but the money is going to

Nevada, to offshore betting sites and to organized crime. Sports betting is going on, but it isn't sanctioned in New Jersey and the profits are going elsewhere.

Legalizing sports wagering recognizes the inevitable - that people are going to bet on sports, whether the practice is legal or not, and that we should provide a safe and legal avenue for them to bet on their favorite teams. By mainstreaming sports wagering, we can take some of the power away from organized crime and offshore Internet operators, and put it in the regulated hands of existing casino and racetrack operators. And we can create new jobs and new economic opportunities for our ailing gaming establishments.

What's more, our society already gives tacit approval to sports wagering. Don't believe me? Open to the sports pages of any newspaper in states that do not allow for legal sports betting, and you'll see terms like "covering the spread," "the line ," or "the over/under" - terms that oddsmakers use to set the parameters on sports wagers.

Recently, the U.S. Supreme Court denied our appeal to reverse the Third Circuit Court of Appeals decision that federal law precluded New Jersey from making sports betting legal. But it strangely stated that the federal law does not preclude us from repealing our laws that make sports betting illegal in New Jersey. Go figure, but the Justice Department stated the same in its brief to the court.

That's exactly what my legislation does. It passed both the Senate and Assembly, overwhelmingly supported by Democrats and Republicans from throughout all parts of New Jersey.

Lawyers involved on our behalf have recommended this approach. The Justice Department would be hard pressed to take any action that followed its own words and was also expressed in the Third Circuit opinion. And the NFL and other sports leagues opposed to sports betting outside of Nevada would not have standing to challenge it.

In any event, we should not give up. Monmouth Racetrack is geared up and will start taking sports bets in September at the start of the NFL season if Gov. Chris Christie signs my legislation. Revel should do likewise. It has nothing to lose. Neither does the State of New Jersey, but we have a lot to gain.

State Sen. Raymond J. Lesniak is a Democrat representing the 20th Legislative District in Union County.

SENATE BILL NO. 2250

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Bill No. 2250 without my approval.

Since the earliest days of my Administration, I have demonstrated my firm commitment to reversing the trend of economic contraction in the State's gaming industry. Together with the Legislature, my Administration has acted boldly to revitalize the gaming industry and to set a new course for economic growth and job creation in this critically important sector of our economy. From the historic establishment of a Tourism District in Atlantic City to expanded wagering opportunities at casinos and racetracks, including the implementation of one of our nation's first Internet gambling laws, I have consistently pursued new and innovative ways to make New Jersey a more competitive gaming jurisdiction and to enhance the financial viability of the State's gaming industry.

Consistent with these efforts, I signed into law legislation authorizing sports wagering at casinos and racetracks in January of 2012. This action followed the passage of a voter-approved Amendment to the State Constitution permitting sports wagering at these venues. These efforts were immediately met with resistance from the four major professional sports leagues and the National Collegiate Athletic Association, who brought suit alleging conflict between New Jersey's sports wagering law and the federal Professional and Amateur Sports Protection Act ("PASPA").

As has been well chronicled, the plaintiffs in this legal battle prevailed in a federal trial court in their

efforts to prevent New Jersey casinos and racetracks from lawfully offering sports betting opportunities, under carefully prescribed rules, to their patrons. As has also been well chronicled, the State, at my direction, appealed that decision to the United States Court of Appeals for the Third Circuit, which agreed with the trial court, and then again to the United States Supreme Court, which declined to take up the State's case. Thus, after a spirited legal effort, the Third Circuit's opinion that PASPA prevents the implementation of New Jersey's sports wagering law represents the binding and final judicial interpretation of federal law. While I do not agree. with the Circuit Court's conclusion, I do believe that the rule of law is sacrosanct, binding on all Americans. That duty adheres with special solemnity to those elected officials privi'leged to swear an oath to uphold the laws of our Nation.

In a novel attempt to circumvent the Third Circuit's ruling, this bill states that all prohibitions against wagering on the results of any professional, college, or amateur sport or athletic event, set forth in State law would no longer apply to wagering at casinos or racetracks in this State. In essence, this bill partially deregulates betting at casinos and racetracks in an effort to sidestep federal law. While I suppOrt the intentions of the Legislature to continue our shared conunitment to enhancing the economic viability of our gaming industry, I cannot sign this bill, which was introduced on the same day the Supreme Court declined to hear our appeal, and then was rushed to final passage just three days later. Ignoring federal law, rather than working to reform federal standards, is counter to our democratic traditions and inconsistent with the Constitutional values I have sworn to defend and protect.

While I remain open to exploring legally sound ways to let the State's casinos and racetracks offer sports wagering, I am mindful that this process takes time. As the sponsors point out, the Third Circuit's opinion may not have foreclosed all legal avenues for permitting sports wagering within the State. Now that the Supreme Court has made clear that it will not be taking the case, the time is right to examine the Third Circuit's opinion carefully and determine if a different approach towards sports wagering would comply with federal law, and further whether this new approach would be in the best interests of the State. In the meantime, we must respect the rule of law and the decisions of our courts.

Accordingly, I herewith return Senate Bill No. 2250 without my approval.

Respectfully,

/s/ Chris Christie

Governor

[seal]

Attest:

/s/ Paul B. Matey

Deputy Chief Counsel to the Governor

LAW ENFORCEMENT DIRECTIVE 2014-1

FORMAL OPINION 1-2014

TO: Elie Honig, Director
New Jersey Division of Criminal Justice

All County Prosecutors

All Municipal Prosecutors

Joseph R. Fuentes, Superintendent
New Jersey State Police

All County Sheriffs

All Police Chief Executives

David L. Rebuck, Director
New Jersey Division of Gaming Enforcement

Frank Zanzuccki, Executive Director
New Jersey Racing Commission

Jeffrey S. Jacobson, Director
New Jersey Division of Law

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Because New Jersey Senate Bill 2460, signed into law by the Governor on October 17, 2014, repeals the Sports Wagering Act in its entirety, Law Enforcement Directive 2014-1 and Formal Opinion 1-2014 are now moot and no longer effective.

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FROM: John J. Hoffinan, Acting Attorney General

SUBJECT: Law Enforcement Directive to Ensure Uniform Enforcement of the Sports Wagering Act's Exemption from Criminal Liability for the Operation of Sports Pools by Casinos and Racetracks

Formal Opinion Addressing the Effects of Law Enforcement Directive 2014-1 on the Sports Wagering Act's Exemption from Civil Liability for the Operation of Sports Pools by Casinos and Racetracks

DATE: September 8, 2014

LAW ENFORCEMENT DIRECTIVE 2014-1

On November 8, 2011, the citizens of New Jersey voted overwhelmingly to amend the New Jersey Constitution to permit the Legislature to repeal prohibitions against the operation of sports pools by casinos and racetracks. Thereafter, Governor Christie signed the Sports Wagering Act, N.J.S.A. 5:12A-1 to -6, to effectuate the will of the people expressed in the constitutional referendum. That statute decriminalized the operation of sports pools by casinos and racetracks, and implemented an extensive licensing and regulatory regime. Those regulations are codified in N.J.A.C. 13:69N-1.1 et seq.

Certain sports leagues claimed that the State's implementation of the Sports Wagering Act violated the federal Professional and Amateur Sports Protection Act ("PASPA"), 28 U.S.C. 3701 et seq. They brought suit in federal court to enjoin the implementation of the Sports Wagering Act. Governor Christie and the other defendants argued that PASP A violated the federal constitution and therefore could not be enforced. The federal district court ruled in favor of the plaintiff sports leagues and, in accordance with PASPA, enjoined the State from licensing or authorizing sports wagering.

Governor Christie and the other defendants appealed to the United States Court of Appeals for the Third Circuit. In September 2013, that court upheld the constitutionality of PASP A on the basis that it

does not require States to maintain existing laws and thus does "not prohibit New Jersey from repealing its ban on sports wagering." N.C.A.A. v. Governor of the State of New Jersey, 730 F.3d 208,232 (3d Cir. 2013), cert. denied, __ U.S. __ (2014) (hereinafter "N.C.A.A. v. Governor" or "Third Circuit opinion"). In holding that New Jersey "may repeal its sports wagering ban," id. at 233, the Third Circuit accepted the positions of the plaintiffs in the case, who had argued that the statute was constitutional because "nothing in [P ASP A) requires New Jersey to maintain or enforce its sports wagering prohibitions," and, indeed, that New Jersey's "repeal of its state-law prohibition on the authorization of sports wagering" itself was "in compliance with PASPA." Br. of the United States ("U.S. Br."), No. 13-1713 (3d Cir.) at 28-29; Br. of Leagues ("Leagues Br.") No. 1713 (3d Cir.) at 16.

The specific issues addressed in this Law Enforcement Directive are whether, in light of N.C.A.A. v. Governor, casinos and racetracks would be committing a criminal offense under New Jersey law if they were to operate sports pools as part of their business activities.

The New Jersey Code of Criminal Justice (Title 2C) provides that when determining whether their conduct constitutes a criminal offense, persons may rely on "an official interpretation of the public officer or body charged by law with responsibility for the interpretation, administration or enforcement of the law defining the offense." N.J.S.A. 2C:2-4(c)(2). Pursuant to the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 et seq., the Attorney General serves as the State's criminal law enforcement officer, and is required to ensure the uniform and efficient enforcement of the criminal law and administration of criminal justice.

The Attorney General ultimately is responsible for the enforcement of our State's criminal laws, including our gambling laws, and therefore is the public officer best suited to interpret the Sports Wagering Act and its relationship to Title 2C in view of the Third Circuit opinion. Given the importance of the issues raised by that opinion, it is appropriate to issue clear and authoritative guidance on whether casinos and racetracks are prohibited by our criminal law from operating sports pools, or whether the provisions of the Sports Wagering Act that exempt casinos and racetracks from criminal liability remain in effect.

For the following reasons, sports pools operated by casinos or racetracks continue to be exempted from criminal liability under New Jersey law so long as no wagering occurs on a college sport or athletic event that takes place in New Jersey or in which any New Jersey college team participates regardless of where the event takes place. See N.J. Const., art. 4, sec. 7, par. 2E and F. Accordingly, no law enforcement or prosecution agency or officer shall, pursuant to N.J.S.A. 2C:37-1 to -9, make an arrest, file a complaint against, or prosecute any person[1] involved in the operation of a sports pool by a casino or racetrack to the extent that such activity takes place consistent with this Law Enforcement Directive.

Title 2C expressly provides that "no conduct constitutes an offense unless the offense is defined by this code or another statute of this State." N.J.S.A. 2C:1-5. Criminal statutes establish the scope of criminal lia-

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[1] The New Jersey Code of Criminal Justice defines "personn to include any natural person and, where relevant, a corporation or an unincorporated association. N.J.S.A. 2C:1-14(g).

bility not only by defining the material elements of offenses, see N.J.S.A. 2C: 1-13(h), (i), but also by creating exemptions or affirmative defenses. In the specific context of gambling, chapter 37 of Title 2C establishes a comprehensive suite of criminal offenses that generally prohibit all persons from promoting gambling or engaging in gambling activity, subject to certain exceptions. See, e.g., N.J.S.A. 2C:37-l(c); N.J.S.A. 2C:37-9.

The Sports Wagering Act, however, provides that "[i]n addition to casino games permitted pursuant to the provisions of P.L.1977, c.110 (C.5:12-1 et seq.) [the Casino Control Act], a casino may operate a sports pool...." N.J.S.A. 5:12A-2(a). It further provides that, "[i]n addition to the conduct of pari-mutuel wagering on horse races under regulation by the racing commission pursuant to chapter 5 of Title 5 of the Revised Statutes, a racetrack may operate a sports pool...." Id. In this manner, the Sports Wagering Act repealed the prohibition against the operation of sports pools by casinos and racetracks, thus exempting those activities from criminal prosecution under New Jersey law. The issue, then, is whether that exemption is consistent with the Third Circuit's ruling. The answer to that question is found in the text and reasoning of the Third Circuit opinion, as well as the concessions made by the plaintiffs in that case.

The Third Circuit made clear that it did "not read PASP A to prohibit New Jersey from repealing its ban on sports wagering." 730 F .3d at 232. The Court reached this conclusion based on the arguments of the sports leagues, which stated that "[n]owhere in its unambiguous text does PASPA order states to keep laws on their books," or "to keep existing laws in effect." Leagues Br. at 16. The United States Department of

Justice, which had intervened in the case to defend PASPA's constitutionality, joined in the leagues' arguments, stating that "nothin in the statute requires New Jersey to maintain or enforce its sports wagering prohibitions," and that "PASPA also allows a state to ... modify or repeal its prohibitions." U.S. Br. at 29. Summarizing and accepting those arguments, the Third Circuit noted that "no one contends that P ASPA requires the states to enact any laws, and we have held that it does not require states to maintain existing laws." 730 F.3d at 235. Indeed, the United States Constitution clearly forbids Congress from requiring a State to criminalize conduct wider state law. As the Third Circuit observed, "Congress 'lacks the power directly to compel the States to require or prohibit' acts which Congress itself may require or prolu"bit." Id. at 227 (quoting New York v. United States, 505 U.S. 144, 166 (1992)).

That federal courts have found the licensing regime of the Sports Wagering Act to be preempted by PA SPA does not invalidate the Sports Wagering Act's repeal of prolu"bitions against the operation of sports pools by casinos and racetracks. Recognizing that the Sports Wagering Act might be challenged under PASPA, the Legislature included a "severability clause" in its statute:

> If any provision of this act, P.L. 2011, c. 231 (C.5:12A-1 et al), or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

[N.J.S.A. 5:12-2(g).]

The Legislature therefore intended for the provisions of the statute that are not directly invalidated to continue in force and effect. Here, as the Third Circuit made clear, and as the sports leagues and the Department of Justice conceded, PASPA does not prohibit States from repealing state-law prohibitions on sports wagering. The Sports Wagering Act's repeal of prohibitions against sports wagering in casinos and racetracks can be given effect without licensing or otherwise authorizing by law sports wagering, as prohibited by the Third Circuit's decision, and, accordingly, mustbegiveneffect. N.J.S.A. 1:1-10.

For the foregoing reasons, it is the view of the Attorney General that, at least, the provisions of the Sports Wagering Act exempting casinos and racetracks from criminal liability for operating a sports pool—specifically, N.J.S.A. 5:12A-2(a), which states that "a casino may operate a sports pool" and that "a racetrack may operate a sports pool," in accordance with how those terms are defined in N.J.S.A. 5: 12A-1—remain in force and effect, and all law enforcement and prosecuting agencies in carrying out their duties under the laws of the State of New Jersey shall abide by that exemption.

Any questions concerning this Law Enforcement Directive shall be addressed to the Director of the Division of Criminal Justice.

FORMAL OPINION 1-2014

The issue also has arisen regarding what effect the above Law Enforcement Directive bas on the civil proscriptions applicable to sports wagering. See N.J.S.A. 2A:40-l to -9. It is the Attorney General's statutory role to "[a]ct as the sole legal advisor" of, and

to "interpret all statutes and legal documents" governing, state agencies. N.J.S.A. 52:17A-4(e).

As explained in the above Law Enforcement Directive, the Sports Wagering Act provides that a casino or racetrack "may operate a sports pool." Accordingly, sports pools operated by casinos and racetracks are exempted from criminal liability so long as no wagering occurs on a college sport or athletic event that takes place in New Jersey orin which any New Jersey college team participates regardless of where the event takes place. For the same reason, sports pools operated by casinos and racetracks are exempted from the civil proscriptions of Title 2A, chapter 40, so long as no wagering occurs on a college sport or athletic event that takes place in New Jersey or in which any New Jersey college team participates regardless of where the event takes place. Accordingly, 1 hereby instruct that the Department of Law and Public Safety shall not object to or seek civilly to enjoin a sports pool operated by a casino or racetrack to the extent that it is conducted in a manner consistent with this Formal Opinion.

Any questions concerning this Formal Opinion shall be addressed to the Director of the Division of Law.

John J. Hoffinan

Acting Attorney General

Dated: September 8, 2014

c. Christopher S. Parrino, Chief Counsel to the Governor

Lee V artan, Executive Assistant Attorney General

Deborah R. Edwards, Counsel to the Attorney General

Sports betting bill heads to Christie's desk after Assembly approval | NJBIZ

Sports betting bill heads to Christie's desk after Assembly approval

October 16. 2014 3:01PM

The Assembly resoundingly voted 73-4 in favor of legislation Thursday that would lift the state's ban on sports betting and effectively pave the way for casinos and racetracks to begin taking wagers on games.

The sports betting bill has been approved and is heading to Christie's desk.

The bill, which received nearly unanimous Senate approval on Tuesday, will now head to Gov. Chris Christie's desk for consideration.

"Everyone recognizes the problems of Atlantic City and the racetracks," Assemblyman Ralph Caputo (D-Belleville), the bill's sponsor in the Assembly, said. "This would be a tremendous boost and a historic move for the state of New Jersey to permit that kind of activity here."

Supporters of the measure believe it helps to reinforce the directive issued last month by acting state Attorney General John Hoffinan permitting casinos and racetracks to begin offering sports wagering without fear of prosecution.

While the four major professional sports leagues and the NCAA have since filed a motion to block the state from following through on the directive, lawmakers believe the legislation will work to strengthen the state's legal position.

The legislation is the centerpiece of the latest push by the state to usher in sports wagering after

losing a roughly two-year legal effort to overturn the Professional and Amateur Sports Protection Act, a federal law that limits sports betting to just four states excluding New Jersey.

The latest bill imposes an age requirement of 21 on those wishing to participate in sports betting and mandates that wagers on games played within the state or those that involve state-based colleges and universities are prohibited. Also outlawed in the legislation is the transport of sports betting equipment across state lines.

It remains unclear if and when Christie will sign the bill. Despite appearing in line with the directive issued by Hoffman, the legislation is nearly identical to a measure that Christie vetoed in August on the grounds that he felt federal law was "sacrosanct."

State Sens. Ramyond Lesniak (D-Union) and Joe Kyrillos (R-Middletown), both primary sponsors of the bill in the Senate, issued a joint statement following the Assembly vote urging Christie to sign the measure.

"We are a short step away from getting this done and a lot closer to bringing sports betting to New Jersey," Lesniak said. " It's been a long, tough effort and we've gone up against powerful interests, but now there is an urgency because sports gaming will be a lifeline to the Atlantic City casino industry at a critical time. It will produce jobs, generate economic activity and be a long-term benefit to New Jersey. I urge the governor to sign it into law as fast he can."

"Sports betting can assist New Jersey's struggling casino industry and with our challenges at Monmouth Park Racetrack," Kyrillos said. Both houses of the Legislature acted quickly to approve this critical

measure and I am confident Governor Christie will join our efforts to help protect Atlantic City and Monmouth Park jobs by signing the bill into law."

Interview with Senator Ray Lesniak: Legal sports betting coming to New Jersey in 2014

September 12, 2014

After all the promising sports betting news coming out ofNew Jersey this week, we caught up with New Jersey State Senator Raymond Lesniak, a champion of bringing sport betting and online gambling into New Jersey, to find out exactly when we can expect legal sports betting to arrive in his state.

Becky Liggero: Thank you for joining me, Senator. In just one month's time, Chris Christie changed his view on Sports Betting in the state of New Jersey and authorized it, what triggered this complete 180?

Senator Lesniak: Two things - the tragedy of casinos closing every week and over 8,000 people out of work - sports betting will give the opportunity for those folks to get back to work. I believe that Revel and Showboat, which have closed down, will reopen if we get them sports betting.

I've been saying this for many years now with this struggle, Las Vegas during Super Bowl week, NCAA tournament, any big sporting event, you cannot get a room and Atlantic City is a ghost town. So Governor Christie felt the heat and felt the footsteps of that as well as my campaign to override his veto of my legislation.

Anybody can change their mind, I don't care, the reason why doesn't matter, but we are back on track. I have new legislation, very similar to the one he vetoed. I believe he'll sign it this time and we'll soon be up and running and be able to take sports bets and bring some life into Atlantic City and our racetracks and bring those jobs back.

BL: We have a date coming up, October 6th, we're looking for a ruling from Michael Shipp, how will your new bill impact on this date?

Senator: It will have great impact because I believe we would Jose without it.

What the Attorney General is now saying is that my original legislation that Shipp enjoined, that he didn't enjoin the part of it that repealed our laws prohibiting sports betting at our casinos and racetracks. The problem is, that's not what my law said, he's saying it implicitly repealed it. I don't believe that argument will succeed. Because it's one thing to say the state can license sports betting at our racetracks and casinos, it's another thing to say, go right ahead and do it, we don't have any Jaws against it. So I think right now he has a losing argument.

I'm glad he brought it to the forefront though because we will now pass new legislation, very similar to the one the Governor vetoed, and once we get that done, we're going to win in court.

BL: We have the leagues who have been fighting against sports betting in New Jersey, what do you think their response is going to be to an this progress that you're making and to these biJJs that you're trying to get passed?

Senator: First of all, they've already responded. They've asked for Dennis Drazin of Monmouth racetrack to stand down for 45 days so they can get their act together.

And I believe - my opinion only - but based on what I heard from the NBA Conunissioner that sports betting is inevitable, that we just want a piece of the action. I believe that ultimately will be the result, and that they'll get a franchise fee for use of their official

statistics, and that New Jersey will not only be the first state, but will be only one of many that will follow our footsteps and use this as a template for going forward. We've already received inquiries from other states in terms of looking and expecting us to succeed and they'll follow along.

BL: So we've got the Monmouth racetrack that is ready to pun the trigger, what do you think it's going to take for other casinos and racetracks to fonow the footsteps of Monmouth?

Senator: I think it's going to take the judge's decision. I have no faith in our casinos, our casino operators are timid, they're one of the reasons why we have so many closures, they have given virtually no support for internet gaming and now for sports betting, but we're going to show them the way despite themselves. We're going to help them come back to life.

Thanks to Dennis Drazin for having the courage and the fortitude to move forward because he knows that his industry, the horse-racing industry that employs thousands of people in New Jersey and their horse farms provide great open space in Monmouth and Ocean County. He's really been the vanguard and the lightening rod – I would not be able to succeed without him moving forward.

BL: Have you had any discussions with William Hill US about the racetrack?

Senator: Only through Dennis Drazin and they're courageous as well, but not as courageous as Dennis, so they're going to wait until the judge rules and I understand that. But regardless, I have a commitment that I'll place the first bet and I'm looking forward to it.

BL: Excellent. And are you stin staying that we better book our rooms now for the Super Bowl?

Senator: Absolutely. Soon every single room in Atlantic City will be all booked up for the Super Bowl.

BL: This is great, and if you had to make a prediction of when you think we're actuany going to see sports betting in the state of New Jersey, when is it going to be?

Senator: 44 days from now. Yesterday I said 45 days. That's how long the sports leagues have asked Monmouth racetrack to stand down to give them time but they're not going to stand down any longer and either am I.

BL: Is there anything else that you wanted to add Senator?

Senator: No, other than this has been a five-year battle, David vs. Goliath (they're David, I'm Goliath) but the result is going to be that we're going to win and thank God because those employees are out of work in Atlantic City and the jobs that are threatened at our racetracks are going to be saved. And that's the great thing about all of this.

BL: This is great, and Senator thank you so much for your time, I really appreciate it.

Senator: It's my pleasure, have a great day.

Views And Opinions Expressed Are Those Of The Author And Do Not Necessarily Reflect Those Of CalvinAyre.com

Senate Approves Sports Betting Bill I New Jersey News, Politics, Opinion, and Analysis

Senate Approves Sports Betting Bill

BY RMCGRATH AT 10/14/14 1:58PM

TRENTON - Acting to remove legal obstacles in the effort to bring sports betting to New Jersey, the Senate on Tuesday approved legislation sponsored by Senator Raymond Lesniak (D-Union), Senator Jim Whelan (D-Atlantic) and Senator Joseph Kyrillos (R-Monmouth) that would explicitly remove language in state law that currently prohibits wagering on sporting events. The move would reinforce the state attorney general's attempt to lift the court injunction preventing the state from moving forward on plans to allow casinos and racetracks to offer sports betting.

"This could put New Jersey at the forefront of an industry with great potential for job creation and economic growth," said Senator Lesniak. "The Atlantic City casino closings and Job losses underscore the importance of getting this done as soon as possible. It could be a lifeline to the casinos, putting people to work and generating economic activity in a growth industry "

The four sports leagues and the NCAA filed a motion in court in an attempt to prevent the New Jersey attorney general from following through on its directive to not enforce the state's law prohibiting sports betting. Removing the law from the books will give our legal position more authority and will help withstand any more challenges, Senator Lesniak said.

The measure would prohibit the transport of sports-betting equipment across state lines, set an age requirement of 21 years old, and prohibit betting on

athletic contests in the state or involving New Jersey colleges

"As Atlantic City rebounds from the traumatic effect of casino closings sports betting could be one of the best and more immediate opportunities to rebuild the city 's economy." said Senator Whelan. "Gaming will always be an important part of our attractions and sports betting will expand on it This is good for Atlantic City, for the casino industry and the state."

http://politickernj.com/2014/10/senate-approves-sports-betting-bi!V 10/20/2014

The gaming activity would also be allowed at state racetracks. helping to rejuvenate a historically important sector that is also experiencing hard times. Senator Kyrillos said.

"New Jersey's continued prohibition on sports betting at our casinos and racetracks is contrary to our interest of supporting employers that provide tens of thousands of jobs and add billions to our state's economy," said Kyrillos "Sports betting will help set New Jersey's wagering facilities apart from the competition and strengthen Monmouth Park and our struggling casino industry."

New Jersey voters approved a non-binding referendum authorizing sports betting by a 2-1 margin in 2011

The bill, S-2460,which was approved 27 - 1, is modeled after the Lesniak-sponsored measure vetoed by the governor before Senator Lesniak developed the legal strategy of removing the state ban. Senator Lesniak identified the opinion by the Federal Court's Third Circuit as an "open invitation" for New Jersey because it stated that it would not violate the federal

ban on sports betting since that ban only applies to "state authorized" wagers.

* * *

THE INDEPENDENT SPORTS WAGERING ASSOCIATION

MEMBERSHIP AGREEMENT

THIS MEMBERSHIP AGREEMENT, dated as of the _____ day of October, 2014 (hereinafter, this "Agreement"), by and among Monmouth Park Racetrack (the "Original Member") and each individual and entity becoming party to this Agreement hereafter (each, an "Additional Member");

Recitals:

WHEREAS, each Original Member desires to enter the business of accepting wagers on professional, collegiate, and amateur sporting events (the "Business"); and

WHEREAS, the Original Party recognizes that to promote the public interest and for the Business to succeed it must preserve the integrity of the sporting events upon which wagers are to be placed and adopted by establishing, through the creation of The Independent Sports Wagering Association ("TISWA"), rules to promote a safe, secure, and reliable sports wagering environment having a high level of consumer protection, as well as safeguards that protect the integrity of the sports contests and athletic events to be wagered on, including fair and just procedures for the resolution of disputes;

NOW, THEREFORE, the Original Member and each Additional Member becoming a party to this Agreement pursuant to Section 9 agree as follows:

1. **Responsible Gaming and Betting.** The Original Member and each Additional Member (each, a "Member") will provide customers with detailed information regarding the risks and harms of gaming and information about qualified sources of help for persons with gambling problems. Each Member will also establish standard procedures to mitigate potential harms caused by gambling, such as not providing credit and establishment of pre-set gambling limits.

2. **Preventing Underage Betting.** Each Member will establish procedures to prevent betting by persons under the age of 21.

3. **Fraudulent and Criminal Behavior.** Each Member will establish procedures to identify and investigate suspicious activities and transactions.

4. **Protection of Consumer Information**. Each Member will protect customer financial and other personal information.

5. **Customer Payments.** Each Member will promptly process payments to customers.

6. **Marketing.** Each Member will take all appropriate measures to ensure that all marketing materials are accurate and do not convey misleading information .

7. **Customer Satisfaction.** Each Member will give its customers the opportunity to register complaints regarding the Member's conduct of the Business and will establish internal procedures for the resolution of disputes.

8. **Internal Enforcement.** The Members will establish internal enforcement measures to ensure the compliance with this Agreement by each Member.

9 **Additional Members.** Any individual or entity seeking to join TISWA and become an Additional Member shall submit an application to all then-existing Members and, upon approval of such application, shall execute a counterpart of this Agreement evidencing its agreement to become a Member of TISWA and to be bound by the terms hereof.

10. **Assignment and Parties Bound by Agreement.** Absent the express prior written consent of each other Member, the rights and obligations of any Member may not be assigned in any way whatsoever and any such attempted assignment shall be void and of no force or effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and to their respective heirs, executors, administrators, successors, and permitted assigns.

11. **No Agency.** Each Member acknowledges and agrees that it will not hold itself out as an agent, partner, or co-venturer of any other Member and that this Agreement is not intended nor shall it be construed to create any business or other relationship between or among any two or more of the Members except as expressly set forth herein.

12. **Disassociation.** Any Member may disassociate itself from TISWA at any time immediately upon notice to each other Member.

13. **Notices.** Any notice or other communication required or which may be given hereunder shall be in writing and shall be delivered personally or sent by electronic mail, commercial overnight courier, or certified mail, return receipt requested and postage prepaid, and shall be deemed given when so delivered personally or, if sent by electronic mail, upon acknowledgment of receipt by the recipient or, if sent by commercial overnight courier, one (1) day after the date so sent or, if sent by certified mail, four (4) days after the date of mailing, to the parties at their respective addresses set forth below, any party, by notice given in accordance herewith to the other party or parties, being entitled to designate another address or person for receipt of notices hereunder.

14. **Counterparts.** This Agreement may be executed by the parties hereto by original, facsimile, or pdf signatures in one or more separate counterparts, each of which when so executed and delivered shall be an original but all such counterparts together constituting one and the same instrument.

[no further text this page; signature page(s) follow(s)]

IN WITNESS WHEREOF, the undersigned Original Party has executed this Agreement as of the date first above written and each undersigned Additional Member has executed a counterpart of this Agreement, as of the date hereof, as evidence of its agreement to become a Member of TISWA and to be bound by the terms hereof.

Original Party:

MONMOUTH PARK RACETRACK

By: _____
Print Name: _____
Title: _____
Notice Address: _____
_____
_____
Attention: _____
e-mail address: _____

* * *

* * *

[1]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, an unincorporated association, NATIONAL BASKETBALL ASSOCIATION, a joint venture, NATIONAL FOOTBALL LEAGUE, an unincorporated association, NATIONAL HOCKEY LEAGUE, an unincorporated association, and OFFICE OF THE COMMISSIONER OF BASEBALL, an unincorporated association doing business as Major League Baseball,

Plaintiffs,

-vs-

CHRISTOPHER J. CHRISTIE, Governor of the State of New Jersey, DAVID L. REBUCK, Director of the New Jersey Division of Gaming Enforcement and Assistant Attorney General of the State of New Jersey, and FRANK ZANZUCCKI, Executive Director of the New Jersey Racing Commission,

CIVIL ACTION NUMBER: 3: 12-cv-04947-MAS-LHG

Defendants,

-and-

STEPHEN M. SWEENEY, President of the New Jersey Senate, SHEILA Y. OLIVER, Speaker of the New Jersey General Assembly, and NEW JERSEY THOROUGHBRED HORSEMEN 'S ASSOCIATION, INC.,

Defendants-Intervenors.

Clarkson S. Fisher United States Courthouse
402 East State Street
Trenton, New Jersey 08608
February 14, 2013

[2]

BEFORE: HONORABLE MICHAEL A. SHIPP UNITED STATES DIS TRICT JUDGE

APPEARANCES:

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BY: PAUL J. FISHMAN, ESQ., UNITED STATES ATTORNEY
and
JOHN ANDREW RUYMANN, ASSISTANT U.S. ATTORNEY
For the District of New Jersey.

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JEFFREYS. CHIESA, ATTORNEY GENERAL FOR THE STATE OF NEW JERSEY

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Attorneys for the Intervenor Defendant.
GIBBONS, PC
BY: MICHAEL R. GRIFFINGER, ESQUIRE
and
THOMAS VALEN, ESQUIRE
Attorneys for the Intervenor Defendant.

Certified as True and Correct as required by Title 28, U.S.C., Section 753
/S/ Cathy J. Ford, CCR, CRR, RPR

[3]

MOTION

THE DEPUTY COURT CLERK: All rise.

THE COURT: Please be seated.

Well, good afternoon. We are here, and we are on the record, in the matter of the NCAA, et al versus Chris Christie, et al. Docket Number 12-4947.

May I have appearances of counsel, please.

MR. MISHKIN: Yes, your Honor. For the plaintiffs, Jeffrey Mishkin, Skadden, Arps, Slate, Meagher and Flom. With me is my partner, Anthony Dreyer. And our colleague is WilliamO' Shaughnessy of McCarter and English.

THE COURT: Welcome.

MR. O' SHAUGHNESSY: Good afternoon, your Honor.

MR. FISHMAN: Good afternoon, your Honor.

Paul Fishman, United States Attorney for the United States Intervenor. With me is Peter Phipps from the Department of Justice, Civil Division in Washington, and Jay Andrew Ruymann who is an Assistant U. S. Attorney in our Trenton office.

THE COURT: And welcome to you folks as well.

MR. OLSON: Theodore Olson, Gibson, Dunn & Crutcher, on behalf of the State of New Jersey. With me is Matt McGill, my partner, and my colleagues, Rob Johnson and Jennifer Nelson.

THE COURT: And welcome.

MR. HOFFMAN: John Hoffman, your Honor, on behalf of the State of New Jersey.

[4] THE COURT: Mr. Hoffman.

MR. RICCIO: Good afternoon, your Honor, Ronald Riccio for the New Jersey Thoroughbred Horsemen's Association, McElroy, Deutsch, Mulvaney & Carpenter. With me is Elliott Berman from my firm.

THE COURT: Welcome. Good to see you.

MR. GRIFFINGER: Good afternoon, your Honor, Michael Griffinger and Tom Valen from Gibbons on behalf of Stephen Sweeney and Sheila Oliver of the legislature of the State of New Jersey.

THE COURT: Okay. Good to see you folks as well.

Well, folks, we're here today for oral argument with regard to the singular issue of the constitutionality of the PASPA statute. The Court has reviewed the parties' extensive briefing. And at this point we have cross - motions for summary judgment, so, in essence, both sides are movants.

So what I'd like to do is, hear from the plaintiffs ' side first, then we'll hear from the defendants. Then I'll allow the plaintiffs an opportunity to respond, and t hen the defendants will have the final word on that side.

At this juncture, I think we can go ahead and just jump right in. So, why don't we start from whoever wants to begin from the plaintiffs.

MR. FISHMAN: Thank you, Judge.

THE COURT: Okay.

[29] find New Jersey's efforts to circumvent that law are not constitutional under the supremacy laws. Thank you, Judge.

THE COURT: Thank you. Mr. Mishkin.

MR. MISHKIN: Thank you, your Honor. Jeffrey Mishkin for the plaintiffs.

I join in the arguments of Mr. Fishman and I will not repeat them, but there are a few points of emphasis I would like to make. And I think in particular trying to unpack this affirmative

action prohibition dichotomy that we are arguing about in commandeering, so let me start there.

Commandeering, the essence, your Honor, the defining feature of a commandeering claim is that Congress has compelled a state legislature or state officials to take some action at the direction of Congress. There can be no commandeering claim under existing Supreme Court precedent unless Congress has required or directed the state either to enact legislation or to carry out a federal regulatory program. One of those two elements must be present under current Supreme Court authority. Neither is present here.

PASPA does not require or compel the State Of New Jersey to enact any legislation or to carry out any federal program. The language - and we should start with the language – the language of PASPA is crystal clear. And all it does is prohibit the state from engaging in certain specified activities. And I won't go through all, sponsoring, [30] authorizing, you know them. The language of PASPA does not require or compel the State of New Jersey to do anything. It forbids conduct, it does not require conduct. And in that respect, your Honor, PASPA is nothing more than an

ordinary exercise of a supremacy clause itself. That's all it is.

Now, I think defendants actually concede that the language of PASPA does not require any affirmative action on the part of the State of New Jersey. Instead, their argument is that PASPA somehow implicitly requires New Jersey to enact or maintain prohibitions on sports gambling. But PASPA requires no such thing. The language does not require it. There is not a word in the legislative history suggesting that is required. And the procedural history of this very case, your Honor, shows that there is no requirement in PASPA to maintain prohibitions on sports betting.

For many years, your Honor knows, until December of 2011, the State of New Jersey's Constitution prohibited the New Jersey Legislature from authorizing gambling on Sporting events. In December of 2011, that prohibition was removed from the Constitution. PASPA did not forbid that removal and the sports organizations did not sue about that. We've never claimed that PASPA compelled the state to maintain any prohibition on sports gambling.

Now, the state says, you still must read PASPA as an implicit requirement to maintain prohibitions because, [31] according to them, as best I understand the argument, no state in the real world would permit a situation to exist where sports gambling was neither authorized nor prohibited by a state. I don't know why not. That is a perfectly plausible state of affairs, for a state to be indifferent as to whether private individuals are gambling on sports.

Let's take a moment here. The purpose of PASPA was only to stop the spread of state-sponsored sports gambling. Congress wanted to be sure that states

were not authorizing or licensing or giving their imprimatur to sports gambling. So long as states, your Honor, are not affirmatively authorizing or licensing sports betting, they are not violating PASPA. There is nothing in PASPA that requires states to enact, maintain or enforce any prohibitions on sports gambling. And for that reason, your Honor, PASPA does not violate commandeering principles.

And I believe the legal principle that decides this case is that a federal statute must be construed wherever possible to avoid constitutional defects. So if PASPA can be read in a manner that avoids a commandeering problem, that is how you must read it. And PASPA clearly can be read to avoid commandeering since it so clearly prohibits conduct and does not require conduct. And in that respect, a new point I want to go to, the *Markell* decision is very instructive.

Now, like the standing issue in *Markell*, the [32] Third Circuit did not directly address the issue of commandeering. But it did address very directly the issue of state sovereignty. The *Markell* court held that because PASPA clearly and expressly prohibits the adoption of state legislation in an area in which Congress has the power to regulate, PASPA does not infringe upon the sovereignty of the State of New Jersey. That holding is obviously and necessarily inconsistent with defendants' commandeering argument.

Commandeering, we all know, means a violation of state sovereignty. And the Third Circuit held that PASPA does not violate the sovereignty of the State of New Jersey. And I don't think the Court here can -- you can't s imply assume that the Third Circuit i s unaware of or unfamiliar with or forgot about principles of commandeering.

The *Markell* case started out

THE COURT: That issue was never put before the Court, correct?

MR. MISHKIN: The issue of state sovereignty was, your Honor, not commandeering.

THE COURT: The commandeering issue?

MR. MISHKIN: Right. That's right. But, remember, the ultimate conclusion was, the sovereignty of the State of New Jersey is not being violated. And I want to talk about the procedural posture of *Markell*.

[33] That started out as an appeal from a denial of a preliminary injunction. But the Third Circuit converted it to a summary judgment motion. On a summary judgment motion, that searches the record, and any available argument, whether it's made or not, is open to the Court to decide to grant or deny summary judgment. That's how you view -- you look at the whole record and all the possible arguments on summary judgment. And, again, unless you're going to assume that, even though the parties didn't raise it, the Court was somehow unfamiliar with it and should not have said, but it did say, the sovereignty of the State of New Jersey is not violated by PASPA. That's a holding by the Third Circuit.

And the request here is a different holding, the exact opposite holding. And I don't think you can make that holding based on, Well, there probably were more arguments that could have been made on that, but they weren't made. The holding was, the sovereignty of New Jersey has not been violated.

And I think it's also important that with the issue of state sovereignty very much on its mind, the Third

Circuit held, and now I am quoting, "PASPA unmistakably prohibits state- sponsored gambling and, therefore, does not violate the sovereignty of the State of New Jersey." That is the reason there was no need, your Honor, to consider –

THE COURT: The State of New Jersey?

[34] MR. MISHKIN: The State of Delaware, I'm sorry. My notes say New Jersey, I meant

Delaware.

There was no need in *Markell*, given that finding, that the way you read PASPA is an unmistakable prohibition.

That can't be commandeering, because commandeering only comes up, not if you are prohibiting, but if you are compelling. So that, I think, is what I want to say on commandeering.

On the discrimination point. Again, Mr. Fishman has covered this quite well, that even where there are distinctions being made among states, there is still a rational-basis test. And so long as there is, you know, a reason for the grandfathering, such as an economic reliance interest, that would satisfy rational-basis scrutiny.

But there really is another rational basis here, that is, somewhat separate from the grandfathering. The purpose of PASPA was to stop the spread, the spread of state-sponsored gambling. The idea was to ensure that the existing problem of state-sponsored gambling did not get any worse than it already was. And Congress' determination to stop the spread of state-sponsored gambling applied equally to all states, as the State of Delaware found out in *Markell* because Delaware is one of the grandfathered states.

But when Delaware tried to expand, to spread gambling beyond the gambling operations that it already had in existence, the Third Circuit found a clear violation of PASPA.

[35] So for Congress to say, Look, we take the world as we find it, we see a problem, we don't want it to get any worse, so we hereby forbid the spread of state-sponsored gambling. That is perfectly rational, your Honor, and that applied to all of the states. Actually, it didn't quite apply to New Jersey, because New Jersey was favored above all other states. New Jersey, for the reliance interests that Mr. Fishman talked about, I think Congress was indeed moved by the investments New Jersey had made in casinos and it was going to give New Jersey, no other state but New Jersey, a one-year opportunity to adopt sport s gambling for its casinos if it wanted to do that. New Jersey chose, wasn't commandeered in any way, it chose not to adopt sports gambling in its casinos. So of all the states in the Union, New Jersey I think has the least basis of anyone to complain that it was treated unfairly by Congress when it enacted PASPA.

Your Honor, the last point I will make is --

THE COURT: Is there any argument that while, even if we accept as true, and I 'm not saying that I do, that PASPA passes a facial challenge, is there an "as applied issue " here when it comes down to the way it's been applied to the states? Is there, I guess, in essence, almost like an equitable argument here that it has a *de facto* result of really creating an inequity within the states?

[36] MR. MISHKIN: Your Honor, where Congress is legislating pursuant to the commerce power, very

broad power, if it has a rational basis for the distinctions it is making, then the distinctions are not unconstitutional. It has to do with whether Congress has acted rationally or not.

And, again, the Supreme Court in the *Dukes* case -- I know that we're in two states there. The *Delaware River Basin* case at least involves some municipalities, City of Philadelphia and other counties that were, perhaps, not being treated exactly equally; but the Third Circuit, in sending that case back to the District Court, did not suggest there was anything other than rational-basis scrutiny even if the grandfathering was permanent. And I think it's instructive, it's not cited to you by the defendants, but if you go back to the remand, the decision on remand where the Court did a much more complete analysis of the facts and concluded that there was a rational basis, there was an economic reliance interest in the grandfathering that was permitted in that case, and then went on to talk about, Well, it is a permanent grandfathering, does that change anything? Does that change the test? And the Court concluded, No. I read the Supreme Court decision in *Dukes*. I read the Third Circuit decision in this case, the *Delaware River Basin* case, and although it might raise a little more of an issue in the mind of a Court, at the end, it is rational-basis scrutiny. And as long as [37] Congress has a rational basis, it can make distinctions among the states. Thank you.

* * *

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
NOS. 13-1713/1714/1715

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION,an unincorporated association; NATIONAL BASKETBALL ASSOCIATION; a joint venture; et al.

UNITED STATES OF AMERICA
(Intervenor in District Court)

v.

GOVERNOR OF THE SATE OF NEW JERSEY; DAVID L. REBUCK, Director of the New Jersey Division of Gaming Enforcement and Assistant Attorney General of the State of New Jersey; et al.

NEW JERSEY THOROUGHBRED HORSEMEN'S ASSOCIATION, INC.; STEPHEN M. SWEENEY; SHEILA Y. OLIVER
(Inervenors in District Court)

Stephen M. Sweeny and Sheila Y. Oliver,
Appellants in 13-1713

Transcript from the audio recording of the oral argument held Wednesday, June 26, 2013 at the United States Courthouse, 601 Market Street, Philadelphia, Pennsylvania. This transcript was produced by James DeCrescenzo, a Fellow of the Academy of Professional Reporters, a Registered Diplomate Reporter, an Approved Reporter of the United States District Court.

BEFORE:

THE HONORABLE JULIO M. FUENTES
THE HONORABLE D. MICHAEL FISHER
THE HONORABLE THOMAS I. VANASKIE

[2]

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, an unincorporated association; NATIONAL BASKETBALL ASSOCIATION, a joint venture; NATIONAL FOOTBALL LEAGUE, an unincorporated association; et al.

UNITED STATES OF AMERICA
(Intervenor in District Court)

V.

GOVERNOR OF THE STATE OF NEW JERSEY; DAVID L. REBUCK., Director of the New Jersey Division of Gaming Enforcement and Assistant Attorney General of the State of New Jersey; et al.

NEW JERSEY THOROUGHBRED HORSEMEN' S ASSOCIATION, INC.; STEPHEN M. SWEENEY; SHEILA Y. OLIVER (Intervenors in District Court)

New Jersey Thoroughbred Horsemen' s Association, Inc.,
Appellant in 13-1714

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, an unincorporated association; NATIONAL BASKETBALL ASSOCIATION, a joint

venture; NATIONAL FOOTBALL LEAGUE, an unincorporated association, et al.

UNITED STATES OF AMERICA
(Intervenor in District Court)

v.

GOVERNOR OF THE STATE OF NEW JERSEY; DAVID L. REBUCK, Director of the New Jersey Division of Gaming Enforcement and Assistant Attorney General of the State of New Jersey; et al.

NEW JERSEY THOROUGHBRED HORSEMEN'S ASSOCIATION, INC.; STEPHEN M. SWEENEY; SHEILA Y. OLIVER
(Intervenors in District Court)

Governor of the State of New Jersey,
David L. Rebuck and Frank Zanzuccki

Appellants in 13-1715 [3]

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[52] section four of the Voting Rights Act, that distinguished among states.

If you look at this statue the provision that distinguishes among states is 3704. It left in place, the Supreme Court that is, section five of the Voting Rights Act, section two of the Voting Rights Act, all of the other things that by their terms apply neutrally to all states. That's 3702.

THE COURT: Mr. Clement, thank you very much.

MR. CLEMENT: Thank you.

THE COURT: Mr. Fishman.

MR. FISHMAN: May it please the Court, Paul Fishman on behalf of the United States. Let me first address the question about what we did or did not say about preemption in the district court, because I do think that the State of New Jersey has slightly mischaracterized what I said at oral argument. And they've given a cite in their brief but it's, it's pages 2706 to 2708 of the transcript.

And I was asked a question by Judge Shipp whether there was any kind of regulatory [53] scheme in place, and I'm quoting, "as a result of either the criminal laws and PASPA combined or the like. I need just to make sure I'm clear on that whole issue if you're asserting that."

And I then talked for a full page about the fact that there's no regulatory scheme in place in New Jersey because of PASPA. Apparently I misunderstood his question because he was asking about a federal regulatory scheme.

He then said, "But to the extent that we're talking about any kind of supremacy clause analysis for preemption purposes, are you contending that there was any kind of regulatory scheme in place?" And I said, "No," there's no regulatory scheme in place. And I said, "If I might clarify, I don't think anybody's arguing the actual doctrine of preemption." We are simply arguing that there was supremacy clause issue.

And let me clarify, and it's a lot like what Mr. Clement just said. But as I read the preemption cases, preemption is a struggle often by the courts to figure out whether Congress has occupied the field or not, or whether what a state wants to do is inconsistent with what [54] Congress wants to do.

So if you read the preemption cases, whether they're field preemption cases or obstacle preemption cases, or the three other king, three or four other kinds of preemption cases there are, inevitably what they all come down to is that question, courts trying to figure out what Congress meant, how much room did Congress leave to the states.

In this case, as Mr. Clement said, there is no question, no question whatsoever what Congress wanted to do, what Congress didn't want the states to do.

Congress, confronted with a problem in 1992, with the spread of authorized, sponsored and the other six words in the statute, sports gambling, Congress said this is a national problem and it's bad, it's bad for sports, it's bad for the country, it's bad for kids who watch games, it's bad for the athletes, it's bad for the integrity of the sport.

So what did Congress do? Congress was not writing on a clean slate, and this responds a little bit to your question, Judge Fisher, about [55] kind of what

relationship is between federal policy and state gambling. And you were a state Attorney General, you said that before. You know that in the field of gambling there is effectively a synergistic relationship, a symbiotic relationship between the federal and state governments.

Federal government regulates gambling to a certain extent, as Mr. Clement point out. But largely for the last I don't know how many, hundred, hundred years at least, the regulation of gambling mostly has been left by Congress to the states. In fact, some of the federal statutes actually refer to state law to try to figure out what might or might not be a violation of federal law.

So when Congress comes to the table in 1992, it says look, the sates are regulating a lot of gambling out there, they're letting something happen, they're not letting other things happen, but there's one thing that we really don't like, and whether you characterize it as a ceiling or a floor, Congress decided in 1992 the one thing it would not let happen out there is the kind of [56] authorized sponsored gambling that it saw as an emerging national phenomenon.

So they did that. And that's a completely rational decision by Congress, it made complete sense at the time and it still makes complete sense today.

THE COURT: But is that preemption?

MR. FISHMAN: Is it preemption? Technically I don't know the answer to that question.

THE COURT: You're not urging - -

Mr. FISHMAN: What I want to say it --it's the supremacy clause. If Congress says you can't do something, it's not preemption to try to figure out whether there's room left for the state. They said no.

THE COURT: Are you urging that we address preemption?

MR. FISHMAN: No, I'm not urging --

THE COURT: You're not, are you?

MR. FISHMAN: No, I'm - -

THE COURT: We can --

MR. FISHMAN: No, I'm suggesting --

THE COURT: We can sidestep [57] preemption, can't we?

MR. FISHMAN: It's not relevant as a legal doctrine for trying to figure out in this case whether there was room for New Jersey to do what New Jersey is trying to do.

What New Jersey is trying to do is flatly inconsistent with federal law. There's nobody who disputes that. There's nobody who says that what New Jersey is doing is allowed by PASPA. PASPA says no.

So that's the - - but then, having reached the conclusion that it wanted to stop something that it saw as pernicious, Congress then says all right, look, we have this practical problem and it's the kind of a problem that legislatures, Congress deal with all the time, we have practical problem.

We have an evil we would like to eradicate, but there are places in the county where people are economically relying on a particular form of activity, in

this case it's lotteries in three states and an organized sports book in Nevada.

And so it's not really an intention to [58] discriminate in favor or against certain states, though I don't doubt that the court may be right that there was certain give and take in the legislature between various Senators or Congressmen about what would or would not play across the country.

But the fact is Congress, recognizing these economic interests already existing, does what Congress is perfectly entitled to do. Congress says there' a reliance interest out there. So while the solution we're crafting is not remotely perfect, and Duke says that that's fine, Nordlinger says it, there are lots of cases that say it doesn't have to be a perfect fit.

Congress, faced with a practical problem says you know what, operating under the power of the commerce clause with a rational basis, we have a rational reason to do this. And that satisfies the rational basis test. Congress certainly had the power to do that under the commerce clause.

And so no, judge, I don't think it matters whether you call it preemption or not, Congress said no.

[59] THE COURT: Could Congress do this in a different setting? It's concerned about the proliferation of medical marijuana laws and so it passes a law that says no state shall -- it shall be unlawful for a governmental entity to authorize medical marijuana, something like that, except for those states that already have it?

MR. FISHMAN: Well, we're not writing on an entirely clean slate.

THE COURT: Right, I understand that.

MR. FISHMAN: There is already a federal statute - -

THE COURT: I understand that.

MR. FISHMAN: -- that no one can get marijuana at all.

THE COURT: Right. And I understand that too.

MR. FISHMAN: And I'm a little reluctant to wade into that debate simply because there's so much controversy about it at the moment.

THE COURT: Right.

MR. FISHMAN: I don't actually know the answer to that question. I haven't thought it through entirely. But the context in which [60] Congress would be writing in that arena would be different because it's not gambling where there is this, where there's exactly the same reliance by the feds on state enforcement.

Now I want to talk for a second about the equal sovereignty argument because I agree with Mr. Clement that in terms of equal sovereignty that Shelby County did not change the landscape for these purposes at all. For the commerce clause, itis still a rational-basis analysis.

The Voting Rights Act, there construction amendments are in a very much more charged context. And they came to the court with a lot of background. And you combine that with what's at issue in the voting rights cases, which is a core federal, a core state interest, right? Because what is more basic to the concept of what state governments are about than voting? And incomes with the entire history.

And so to try to take that analysis and a vague, relatively new statement of what the law might be,

that it has to be sufficiently related, and try to take it outside that context I don't think makes a lot of sense.

[61] In fact the court itself said in Shelby County, this was extraordinary legislation that imposed on states an obligation very different from the kinds of obligations that states have in any other context, and they're talking about there-clearance --

THE COURT: On the other hand Justice

Ginsburg in her dissent, the first statute she mentioned as perhaps being implicated by this doctrine is PASPA.

MR. FISHMAN: She did say that. There's a list of, there are a list of four or five statutes in Justice Ginsburg's dissent

THE COURT: Right.

MR. FISHMAN: -- in which -- but she asked the rhetorical question, what's the impact going to be of that. I don't think she answers the question, and it's not inconsistent with other dissents in which people sort of raise their hand and say oh my God, where are we going next?

But I think the answer to that question is clear as we expressed in our 28(j)letter to the court yesterday. I don't think that Shelby County alters the analysis for the purposes [62] of this case.

I do want to talk for a minute and particularly in response to Judge Fuentes' question about New York and Printz because I do think that the anticommandeering doctrine has no applicability to this case.

And I want to start by saying first of all in 20 years there have been two cases in which the Supreme

Court has said the anticommandeering provisions of the Tenth Amendment have been violated.

If you take Mr. Olson's brief at its word and you count Coyle and Smith, then it's two cases in a hundred years. But I don't actually think that Coyle and Smith is an anticommandeering case. I think it's a very different case for the reasons we articulated in our brief. It has to do with Article IV and it has to do --

THE COURT: And you don't think Sebelius is an anticommandeering case?

MR. FISHMAN: I don't think Sebelius-- at the end of the day I don't think, I don't think -- there's language about the Tenth Amendment but I don't think that's where they came out in the [63] end.

THE COURT: Right. Okay.

MR. FISHMAN: But I think that teething that clearly motivated the court in New York, and again as a former Attorney General you'll appreciate this, what the State of New York was faced with, what all states were faced with in New York was the Low Level Radioactive Waste act which had sort of three tiers of incentives for states to comply with what were going to be the federal standards for where you were going to store low-level radioactive waste, which was a huge problem.

What's interesting about New York is that the first two tiers, which were actually quite Draconian and really were economically severe forth states who were not complying, were perfectly fine under New York. They could tax states more, and you could collect taxes and redistribute them if you weren't complying with federal standards, that was fine.

If you were from a state where testate had not yet adopted the federal regulations and you were a dumper and you went to another state [64] you could be charged double or triple or turned away entirely. That was totally fine.

What the court didn't like in New York was the idea that if you didn't comply with federal standards and you were a state government you would end up owning, owning low-level radioactive wasteland all the attendant tail liability that went with it. That's pretty extraordinary. And you can see why the court was offended by that.

In Printz the court then turns to the idea that the federal government has this enforcement scheme in which it wants to stop certain people from buying weapons, prohibited people under the law.

And what it says is we're not going to have the federal government be the only people to-do this background check. In fact the background checks are going to be done by state officials. And those state officials must use reasonable efforts to figure out whether people are prohibited under the statute or not.

And the opinion in that case written by Justice Scalia says no, no, you can't make state officials affirmatively do things. And he [65] reiterates in the Printz case that the real issue, and he says, I'm quoting, the real issue is, quote, "the forced participation of the States' executive in the actual administration of a federal program."

What he didn't like was the discretion -- there's no discretion on the part of the state officials to decide what they would or would not do.And that decision was consistent with the Hodel case and the FERC case in which the court said, look, if the state government

doesn't have to enforce standards, doesn't have to spend money, doesn't have to participate in the federal regulatory scheme, then there's not a problem. And that's exactly what happened in Reno.

I know that the state and the other defendants would like to cabin Reno. But you're exactly right. The language in Reno, I won't quote it now, the language in Reno is enormously more expansive than that and really says if you're not making the state do something affirmative, if you're really not making the state go out and regulate its citizens, if you're not making the [66] state spend money, if you're not making the state do a whole host of things then you haven't violated the anticommandeering provisions of the Tenth Amendment.

And I don't think it's fair, as one of my adversaries did, to characterize it as mere merchandising. I think that it was very much the concern with how the state uses its own data, information that comes to it as a state government.

The last argument I want to deal with is the argument that somehow we've changed our position on PASPA, that somehow we have now decided that PASPA does not let the state make changes to its existing gambling regulations that are different from the ones that are at issue in this case.

And I wrote down what I thought was a pretty good list as Mr. Olson went through them.

He said they can't change the law, they have to enforce the law on the books, they have to keep it illegal.

None of that is true. I suspect, though I don't know the answer to this question, that the state gambling laws in all 50 states are [67] different to some

extent. The penalties are different. How many people have to participate in a gambling operation are different. The court knows from having served as an Attorney General that gambling cases are not always enforced. Law enforcement officials make discretionary decisions all the time based on budget or priorities that some gambling cases are going to get done and some don't.

We're not asking the State of New Jersey to to do any of that. It is up to the State of New do or not Jersey to determine for itself the extent to which it will or will not enforce that law. Nothing in PASPA --

THE COURT: So New Jersey could repeal a ban on wagering on sporting events?

MR. FISHMAN: As a matter of law it could. It would be incredibly irresponsible.

THE COURT: It would not violate PASPA?

MR. FISHMAN: No. But the reason it hasn't done that for 20 years or a hundred years is not because of PASPA. It hasn't done it because it's a really, really, really bad idea. It's [68] irresponsible, it would be bad policy to just allow gambling to go unfettered.

New Jersey is not trying to do this now because it wants to stop the flood of illegal gambling. The legislative history in New Jersey is quite clear, they're doing this because -- the reason is citizens of New Jersey - -

THE COURT: What if New Jersey said, instead of doing what they did, they said the only place where you can get an NCAA basketball pool is at the casino in Atlantic City and anyone who gets one from their friend at work could be prosecuted?

MR. FISHMAN: Okay.

THE COURT: Would that violate PASPA?

MR. FISHMAN: Would it violate PASPA? You know, to the extent that the state is now sponsoring or advertising or promoting betting on amateur or professional sporting events, I guess the answer would be yes.

But it wouldn't apply in Mr. Riccio's in terrorem example to the people who were playing ping-pong in their basement and people who are betting perhaps on the Jets and the Giants or the Eagles and the Steelers. It wouldn't cover that.

[69] And so I think we have to be very careful about saying that New Jersey all has been placed into this Hobson's choice of doing one thing or the other. It doesn't.

There's one thing it can't do. It can't do what it's trying to do here. But if it wants to tinker with its gambling statute in a responsible exercise of state law and enforcement power, it's perfectly free to do that.

THE COURT: Mr. Fishman, thank you very much.

MR. FISHMAN: Thank you, judge.

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Nos. 13-967, 13-979 and 13-980
In the Supreme Court of the United States

Chris Christie, Governor of New Jersey, et al.,
Petitioners
v.
National Collegiate Athletic Association, et al.

New Jersey Thoroughbred Horsemen's
Association, Inc., Petitioner
v.
National Collegiate Athletic Association, et al.

Stephen M. Sweeney, President of the
New Jersey Senate, et al., Petitioners
v.
National collegiate athletic association, et al.

ON PETITIONS FOR WRITS OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

**BRIEF FOR THE UNITED STATES
IN OPPOSITION**

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QUESTIONS PRESENTED

The Professional and Amateur Sports Protection Act (PASPA), 28 U.S.C. 3701 *et seq.*, prohibits States and other governmental entities from, among other things, "licens[ing], or authoriz[ing] by law or compact," gambling on sporting events. 28 U.S.C. 3702(1). PASPA also prohibits persons from sponsoring, operating, advertising, or promoting sports gambling schemes pursuant to state law. 28 U.S.C. 3702(2). PASPA exempts state-sponsored sports gambling schemes in four States that were already in operation at the time of PASPA's enactment. 28 U.S.C. 3704(a)(1)-(2). The questions presented are:

1. Whether PASPA's prohibition on state licensing and authorization of sports gambling violates the Tenth Amendment.

2. Whether PASPA's exemption of pre-existing state-sponsored sports gambling schemes in four States deprives the other 46 States of equal sovereignty.

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In the Supreme Court of the United States

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ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-82a)[1] is reported at 730 F.3d 208. The opinion of the district court (Pet. App. 83a-136a) is reported at 926 F. Supp. 2d 551.

JURISDICTION

The judgment of the court of appeals was entered on September 17, 2013. Petitions for rehearing were denied on November 15, 2013 (Pet. App. 156a-157a). The petitions for writs of certiorari in No. 13-967 and No. 13-979 were filed on February 12, 2014. The petition for a writ of certiorari in No. 13-980 was filed on February 13, 2014. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Professional and Amateur Sports Protection Act (PASPA), 28 U.S.C. 3701 *et seq.*, was enacted in 1992 "to stop the spread of State-sponsored sports gambling and to maintain the integrity" of professional and amateur sports. S. Rep. No. 248, 102d Cong., 1st Sess. 4 (1991) (Senate Report). PASPA's restrictions on state-sponsored sports gambling schemes apply both to the States themselves and to private parties. State and local governments may not "sponsor, operate, advertise, promote, license, or authorize by law or compact," sports gambling schemes. 28 U.S.C. 3702(1). Private parties are prohibited from sponsoring, operating, advertising, or promoting such schemes pursuant to state or local law or compact. 28

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[1] For ease of reference, all Pet. App. citations in this brief will be to the appendix to the petition for a writ of certiorari in No. 13-967.

U.S.C. 3702(2). These restrictions apply to any "lottery, sweepstakes, or other betting, gambling, or wagering scheme" that is "based * * * on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games." 28 U.S.C. 3702.

The Attorney General can seek to enjoin violations of PASPA in federal court. See 28 U.S.C. 3703. PASPA also authorizes professional and amateur sports organizations to seek injunctions against violations of PASPA that involve betting on one of their competitive games. See *ibid.*

At the time that PASPA was enacted, state-sponsored sports gambling schemes were already in operation in four States (Delaware, Montana, Nevada, and Oregon). Congress adopted grandfathering provisions that exclude those pre-existing schemes from the general prohibitions of PASPA. *See* 28 U.S.C. 3704(a)(1)-(2); Senate Report 8; 138 Cong. Rec. S7276 (daily ed. June 2, 1992) (statement of Sen. DeConcini). As explained by the Senate Judiciary Committee, "[a]lthough the committee firmly believes that all such sports gambling is harmful, it has no wish to apply this new prohibition retroactively * * * or to prohibit lawful sports gambling schemes * * * that were in operation when the legislation was introduced." Senate Report 8. PASPA grandfathers only the particular sports gambling schemes that were in existence when it was enacted, and does not permit the introduction of other sports gambling schemes in those States. *See Office of the Comm'r of Baseball* v. *Markell*, 579 F.3d 293, 301-304 (3d Cir. 2009) (finding that 28 U.S.C. 3704(a)(1) does not permit the Delaware lottery to offer betting on National Basketball

Association games because the lottery did not offer such betting when PASPA was enacted), cert. denied, 559 U.S. 1106 (2010).

In addition, PASPA offered an exception for any casino-based sports gambling scheme that was authorized by a State within one year of PASPA's effective date. 28 U.S.C. 3704(a)(3). That exception was subject to conditions that effectively confined it to New Jersey.[2] However, New Jersey chose not to establish state-sponsored sports gambling within the time permitted under that exception. See *In re Petition of Casino Licensees for Approval of a New Game, Rulemaking and Authorization of a Test*, 633 A.2d 1050, 1051 (N.J. Super. Ct. App. Div.), aff'd, 647 A.2d 454 (N.J. 1993) (per curiam). As a result, New Jersey is subject to PASPA's general restrictions on state-sponsored sports gambling.

2. In 2011, New Jersey amended its constitution to permit the legislature to "authorize" wagering "on the results of any professional, college, or amateur sport or athletic event" at casinos and racetracks throughout the State. See N.J. Const. Art. 4, § 7, Para. 2(D)-(E). That new constitutional provision retains prohibitions on gambling "on a college sport or athletic event that takes place in New Jersey or on a

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[2] The exception was available only if casino gambling had been in operation in a State for the preceding ten years and had been confined to a single municipality in the State. 28 U.S.C. 3704(a)(3)(A)-(B). New Jersey was the only State that could satisfy those conditions. See 138 Cong. Rec. at S7280 (statement of Sen. Grassley) (recognizing New Jersey to be the only eligible State).

sport or athletic event in which any New Jersey college team participates regardless of where the event takes place." *Id.* § 7, Para. 2(D).

The New Jersey Legislature then enacted the Sports Wagering Law, which authorizes "wagering at casinos and racetracks on the results of certain professional or collegiate sports or athletic events." 2011 N.J. Laws 1723. To implement that statute, New Jersey promulgated regulations setting forth the procedures by which Atlantic City casinos and racetracks throughout New Jersey could obtain licenses and conduct sports gambling. See N.J. Admin. Code § 13:69N (2014). As a result of those constitutional, statutory, and regulatory provisions, sports gambling in New Jersey may be authorized and conducted only pursuant to a state-issued license. See N.J. Stat. Ann. § 5:12A-2 (West 2012).

3. a. In August 2012, before New Jersey issued any license for sports gambling, respondent sports organizations brought suit against the Governor and other state officials under PASPA. The sports organizations contended that, as a matter of law, New Jersey's efforts to authorize and license sports gambling schemes violate PASPA. Pet. App. 139a-140a.

In response, petitioners raised numerous constitutional challenges to PASPA. First, they asserted that PASPA's regulation of sports gambling exceeds Congress's power under the Commerce Clause of the Constitution, Art. I, § 8, Cl. 3. Second, they claimed that 28 U.S.C. 3702(1), which prohibits States from licensing or authorizing sports gambling by law or compact, violates the Tenth Amendment anti-commandeering principle recognized by this Court in *New York* v. *United States*, 505 U.S. 144 (1992), and *Printz* v.

United States, 521 U.S. 898 (1997). Third, they argued that 28 U.S.C. 3704(a)(1)-(2), which grandfathered pre-existing state-authorized sports gambling schemes in four states, deprives the 46 other states of equal sovereignty. Finally, they argued that the grandfather provisions violate the Due Process Clause of the Fifth Amendment. Following the assertion of those defenses, the United States intervened to defend the constitutionality of PASPA pursuant to 28 U.S.C. 2403. See Pet. App. 87a; see also *id.* at 93a-133a.

The district court rejected all of petitioners' constitutional claims. See Pet. App. 83a-136a The court found that PASPA is a constitutionally permissible exercise of Congress's Commerce Clause authority. *Id.* at 93a-101a. The court further concluded that PASPA does not offend anti-commandeering principles because it does not obligate state governments to adopt, enforce, or administer federal law, but instead merely prohibits them from sponsoring sports gambling. *Id.* at 101a-125a. The court also held that PASPA's grandfather provisions do not offend principles of equal sovereignty or the equal protection component of the Due Process Clause. *Id.* at 125a-133a. The court accordingly entered judgment in favor of the sports organizations, enjoining the New Jersey defendants from implementing the state-sponsored sports wagering initiative. *Id.* at 136a.

b. The court of appeals affirmed. Pet. App. la-59a.

After determining that the sporting organizations had Article III standing (Pet. App. lla-24a), the court of appeals addressed petitioners' constitutional defenses. The court began by rejecting the claim that PASPA's restrictions on state-sponsored sports gambling exceed Congress's commerce power. The court

reasoned that organized sporting contests such as those conducted by the sporting organizations are economic activities with substantial effects on inter-state commerce, as is wagering on those contests, and that prohibiting states from licensing sports wagering is a rational means of regulating commerce in this area. *Id.* at 25a-30a.[3]

The court of appeals also rejected petitioners' claim that PASPA violates the Tenth Amendment's commandeering prohibition. Pet. App. 30a-53a. The majority first noted that because PASPA is a valid exercise of Congress's Commerce Clause power, it renders conflicting state laws invalid under the Supremacy Clause. The court also explained that the preemption of state laws via the Supremacy Clause does not constitute impermissible commandeering. *Id.* at 37a (A "[S]tate's sovereignty is [not] violated when it is precluded from following a policy different than that set forth by federal law.").

The court of appeals then compared the prohibition on state licensing and authorization of sports gambling in 28 U.S.C. 3702(1) with the federal statutory provisions invalidated on anti-commandeering grounds in *New York* and *Printz*. Pet. App. 39a-46a. The court noted that the laws in *New York* and *Printz* obligated state governments to take affirmative actions in support of the federal regulatory schemes. By contrast, PASPA "does not *require* or coerce the states to lift a finger—they are not required to pass laws, to take title to anything, to conduct background checks, to expend any funds, or to in any way enforce federal law." *Id.* at 39a.

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[3] Petitioners do not seek review of this portion of the court of appeals' judgment.

The court of appeals found it "hard to see how Congress can 'commandeer' a state, or how it can be found to regulate how a state regulates, if it does not require it to do anything at all." Pet. App. 39a-40a. The court noted that, under this Court's Tenth Amendment precedents, "statutes prohibiting the states from taking certain actions have never been struck down," even when the statutes (unlike PASPA) "require the expenditure of some time and effort or the modification or invalidation of contrary state laws." *Id.* at 40a (citing *Reno* v. *Condon*, 528 U.S. 141, 150 (2000), and *South Carolina* v. *Baker*, 485 U.S. 505, 515 (1988)).

The court of appeals rejected petitioners' contention that Section 3702(1) affirmatively obligates States to enact and maintain laws banning sports gambling. The court explained that the mere absence of state prohibitions on sports gambling does not constitute "authoriz[ing]" gambling "by law or compact," 28 U.S.C. 3702(1), and hence PASPA leaves States free to repeal their laws prohibiting sports gambling if they wish. Pet. App. 40a-43a.

The court of appeals acknowledged the concern that affirmative federal obligations on States could be disguised as conditional prohibitions—for example, by recasting the background-check requirement in *Printz* as a rule prohibiting States from issuing hand-gun permits unless state officials perform background checks. Pet. App. 43a. But the court pointed out that the specter of an affirmative mandate masquerading as a conditional prohibition was irrelevant in this case, because PASPA's prohibition on state authorization and licensing of sports gambling is an unconditional one, which "simply bars certain acts under any and all circumstances." *Ibid.*

The court of appeals also noted that, independent of Section 3702(1)'s restrictions on state licensing and authorization, Section 3702(2) prohibits individuals from engaging in sports gambling schemes pursuant to state law. Pet. App. 49a. Thus, "even if the provision that offends New Jersey, [Section] 3702(1), were excised from PASPA, [Section] 3702(2) would still plainly render the Sports Wagering Law inoperative by prohibiting private parties from engaging in gambling schemes pursuant to that authority." *Ibid.* The court reasoned that Section 3702(2) thus has an independent preemptive effect on the New Jersey gambling law. *Ibid.*

Finally, the court of appeals rejected petitioners' equal sovereignty challenge. Pet. App. 53a-56a. The court declined to invalidate PASPA simply because the grandfather clauses permit state-sponsored sports wagering in four States. The court questioned the applicability of the equal sovereignty concept to Commerce Clause legislation, but held that even if that doctrine were applicable, PASPA's prohibitions were *"precisely tailored"* to Congress's goal of preventing the expansion of state-sponsored sports wagering. *Id.* at 54a-56a.

Judge Vanaskie dissented. He disagreed with the panel majority's anti-commandeering analysis, but agreed with the majority in all other respects. Pet. App. 60a-82a.

ARGUMENT

The court of appeals held that Section 3702(1) of PAPSA, which bars States from licensing and authorizing sports gambling schemes, violates neither the anti-commandeering principle of the Tenth Amend-

ment nor principles of equal sovereignty. That decision is correct and does not conflict with any decision of this Court or any other court of appeals. And because PASPA independently prohibits private parties from conducting state-authorized sports gambling schemes, New Jersey's casinos and racetracks may not lawfully engage in sports betting regardless of how the constitutionality of Section 3702(1) is resolved. Further review is not warranted.

1. a. Under the Tenth Amendment, "the Federal Government may not compel the States to implement, by legislation or executive action, federal regulatory programs." *Printz* v. *United States*, 521 U.S. 898, 925 (1997). On only two occasions, in *New York* v. *United States*, 505 U.S. 144 (1992), and in *Printz*, has this Court held federal statutory provisions to offend this rule against commandeering the machinery of state governments. See *Reno* v. *Condon*, 528 U.S. 141, 149-151 (2000) (rejecting such a challenge).

As the court of appeals recognized (Pet. App. 39a-46a), the statutory provision at issue in this case differs fundamentally from the provisions invalidated on anti-commandeering grounds in *New York* and *Printz*. In *New York*, the "take title" provision of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (Nuclear Waste Policy Act), 42 U.S.C. 20216 *et seq.*, obligated States either to take ownership and possession of nuclear waste and assume liability for the operators' damages, or to regulate the waste in accordance with Congress's instructions. 505 U.S. at 153-154, 175-76. In *Printz*, the Brady Handgun Violence Prevention Act (Brady Act), Pub. L. No. 103-159, 107 Stat. 1536, obligated state law-enforcement officers to conduct background checks in connection with the transfer of handguns. 521 U.S. at 903. Thus, the

statutes at issue in those cases turned the States into involuntary agents of the federal government, forcing them to enact federally prescribed legislation or execute federal law, and expend state funds in the implementation of federal regulatory programs.

In contrast, PASPA does not obligate States to enact any law or to implement or administer any federal regulatory requirement. Indeed, PASPA does not require States to do anything. New Jersey was able to comply with PASPA for more than 20 years without taking any legislative or administrative action and without expending any resources. PASPA does not even obligate New Jersey to leave in place the state-law prohibitions against sports gambling that it had chosen to adopt prior to PASPA's enactment. To the contrary, New Jersey is free to repeal those prohibitions in whole or in part. Pet. App. 41a-43a. The court of appeals was therefore correct to hold that PASPA does not commandeer the governmental machinery of New Jersey, or any other State, in any way.

Petitioners concede that *New York* and *Printz* "involved affirmative commands to the States," but they assert that those decisions establish a far broader rule, under which Congress may not enact legislation that restricts a State's ability to license or otherwise affirmatively authorize private conduct. 13-967 Pet. 15, 20. That reading of *New York* and *Printz* is belied by the Court's express formulation of its anti-commandeering holdings in *Printz:*

> We held in *New York* that Congress cannot compel the States to enact or enforce a federal regulatory program. Today we hold that Congress cannot circumvent that prohibition by conscripting the States' officers directly. The Federal Government

> may neither issue directives requiring the States to address particular problems, nor command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program.

521 U.S. at 935; *see also id.* at 918 (examining whether the Brady Act required "the forced participation of the States' executive in the actual administration of a federal program"). Thus, this Court itself has framed the anti-commandeering principle as a restraint on Congress's power to require States affirmatively to "enact or enforce" federally prescribed regulatory requirements.

This Court's subsequent decision in *Condon*, *supra*, confirms the limits of the anti-commandeering principle and illustrates why PASPA does not run afoul of that principle. See Pet. App. 33a-34a, 46a-47a. In *Condon*, South Carolina challenged the constitutionality of the Driver's Privacy Protection Act of 1994 (DPPA), 18 U.S.C. 2721 *et seq.*, which prohibits States from selling personal information obtained in connection with a motor vehicle record. 528 U.S. at 143. In rejecting South Carolina's anti-commandeering claim, the Court explained that "the DPPA does not require the States in their sovereign capacity to regulate their own citizens," "does not require the South Carolina Legislature to enact any laws or regulations," and "does not require state officials to assist in the enforcement of federal statutes regulating private individuals." *Id.* at 151. The Court in *Condon* "accordingly conclude[d] that the DPPA is consistent with the constitutional principles enunciated in *New York* and *Printz*." *Ibid.*

Likewise here, PASPA does not require the States to regulate their own citizens, does not require them to enact any laws or regulations, and does not require state officials to assist in the enforcement of federal laws.[4] It is therefore just as "consistent with the constitutional principles enunciated in *New York* and *Printz*" as the law upheld in *Condon*. See 528 U.S. at 151

Petitioners suggest that the Third Circuit's reasoning would permit Congress to recast impermissible commands to State legislatures as conditional prohibitions—for example, by prohibiting a State from licensing particular private activity except in conformity with federal conditions, thereby effectively compelling the State to conform its licensing requirements to federally imposed terms. 13-967 Pet. 27-28. But as the court of appeals pointed out, PASPA does nothing of the sort. Pet. App. 43a. It does not prohibit States from licensing sports gambling unless they do so in

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[4] Petitioners attempt to distinguish *Condon* on the ground that South Carolina there was acting as a market participant, not as a sovereign. 13-967 Pet. 21. But *Condon* addressed South Carolina's status as a market participant not in response to the State's anti-commandeering claim, but in response to a different constitutional objection—namely, the claim "that the DPPA is unconstitutional because it regulates the States exclusively." 528 U.S. at 151. To the extent that States undertake to act as market participants in sports gambling schemes, the restrictions that apply to them under PASPA are equally applicable to private parties. Compare 28 U.S.C. 3702(1) (unlawful for "governmental entity to sponsor, operate, advertise, [or] promote" sports gambling), with 28 U.S.C. 3702(2) (same prohibition for private parties). New Jersey has not contended that the Tenth Amendment immunizes States from federal laws that regulate them as market participants.

accordance with federally prescribed standards. Instead, it flatly prohibits state licensing and authorization of sports gambling. See *ibid.* (PASPA "simply bars certain acts under any and all circumstances").[5]

The court of appeals therefore was not called on to decide whether, or in what circumstances, the Tenth Amendment's anti-commandeering principle might be offended by conditional federal restrictions. Indeed, the court emphasized that it "t[ook] seriously the argument that many affirmative commands can be easily recast as prohibitions," and declared that "[t]he anti-commandeering principle may not be circumvented so easily." Pet. App. 43a. Thus, neither the court of appeals' decision nor PASPA itself provides an occasion for this Court to address the constitutionality of the kinds of conditional prohibitions hypothesized by petitioners.

b. Section 3702(1) of PASPA does subject States to a limitation on their legislative and administrative authority: it prohibits States from licensing or "authoriz[ing] by law or compact" any sports gambling scheme. But there is nothing constitutionally suspect about federal legislation that disables a State from enacting or implementing a particular regulatory program. The constitutionality of such legislation follows directly from the Supremacy Clause, which makes a federal law enacted pursuant to the Constitution "the supreme Law of the Land" and requires inconsistent

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[5] Of course, this Court has sustained Congress's power to enact a statute under which a State may choose to adopt regulations satisfying federal standards and the federal government will assume regulatory responsibility if the State chooses not to do so. See *Hodel* v. *Virginia Surface Mining & Reclamation Ass'n, Inc.*, 452 U.S. 264, 288-289 (1981).

state laws to give way. U.S. Const. Art. VI, Cl. 2. By virtue of the Supremacy Clause, the federal government, acting within the scope of its enumerated powers, is free to enact laws that preclude States from enacting and implementing otherwise permissible legislation. See *Gregory* v. *Ashcroft*, 501 U.S. 452, 460 (1991) ("As long as it is acting within the powers granted it under the Constitution, Congress may impose its will on the States.").

Nor is there anything novel or constitutionally suspect about federal legislation that, like Section 3702(1), operates by expressly prohibiting States from enacting particular laws. See, *e.g.*, 15 U.S.C. 376a(e)(5)(A) ("No State, local, or tribal government, nor any political authority of 2 or more State, local, or tribal governments, may enact or enforce any law or regulation" placing specified restrictions on delivery of "cigarettes or smokeless tobacco" by common carriers.); 23 U.S.C. 102(a) ("No State or political subdivision of a State may enact or enforce a law" whose "principal purpose" is to restrict access of motorcycles to federally funded highways.); 23 U.S.C. 127(b) ("No State may enact or enforce any law denying reasonable access" of trucks "to and from the Interstate Highway System to terminals and facilities for food, fuel, repairs, and rest."); 49 U.S.C. 508(c) ("No State or political subdivision thereof may enact, prescribe, issue, continue in effect, or enforce any law" prohibiting, penalizing, or imposing "liability for furnishing or using" driver "safety performance records in accordance with" federal regulations.).

In *Morales* v. *Trans World Airlines, Inc.*, 504 U.S. 374 (1992), this Court was presented with one such federal statute, which "expressly pre-empts the States

accordance with federally prescribed standards. Instead, it flatly prohibits state licensing and authorization of sports gambling. See *ibid.* (PASPA "simply bars certain acts under any and all circumstances").[5]

The court of appeals therefore was not called on to decide whether, or in what circumstances, the Tenth Amendment's anti-commandeering principle might be offended by conditional federal restrictions. Indeed, the court emphasized that it "t[ook] seriously the argument that many affirmative commands can be easily recast as prohibitions," and declared that "[t]he anti-commandeering principle may not be circumvented so easily." Pet. App. 43a. Thus, neither the court of appeals' decision nor PASPA itself provides an occasion for this Court to address the constitutionality of the kinds of conditional prohibitions hypothesized by petitioners.

b. Section 3702(1) of PASPA does subject States to a limitation on their legislative and administrative authority: it prohibits States from licensing or "authoriz[ing] by law or compact" any sports gambling scheme. But there is nothing constitutionally suspect about federal legislation that disables a State from enacting or implementing a particular regulatory program. The constitutionality of such legislation follows directly from the Supremacy Clause, which makes a federal law enacted pursuant to the Constitution "the supreme Law of the Land" and requires inconsistent

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[5] Of course, this Court has sustained Congress's power to enact a statute under which a State may choose to adopt regulations satisfying federal standards and the federal government will assume regulatory responsibility if the State chooses not to do so. See *Hodel* v. *Virginia Surface Mining & Reclamation Ass'n, Inc.*, 452 U.S. 264, 288-289 (1981).

state laws to give way. U.S. Const. Art. VI, Cl. 2. By virtue of the Supremacy Clause, the federal government, acting within the scope of its enumerated powers, is free to enact laws that preclude States from enacting and implementing otherwise permissible legislation. See *Gregory* v. *Ashcroft*, 501 U.S. 452, 460 (1991) ("As long as it is acting within the powers granted it under the Constitution, Congress may impose its will on the States.").

Nor is there anything novel or constitutionally suspect about federal legislation that, like Section 3702(1), operates by expressly prohibiting States from enacting particular laws. See, *e.g.*, 15 U.S.C. 376a(e)(5)(A) ("No State, local, or tribal government, nor any political authority of 2 or more State, local, or tribal governments, may enact or enforce any law or regulation" placing specified restrictions on delivery of "cigarettes or smokeless tobacco" by common carriers.); 23 U.S.C. 102(a) ("No State or political subdivision of a State may enact or enforce a law" whose "principal purpose" is to restrict access of motorcycles to federally funded highways.); 23 U.S.C. 127(b) ("No State may enact or enforce any law denying reasonable access" of trucks "to and from the Interstate Highway System to terminals and facilities for food, fuel, repairs, and rest."); 49 U.S.C. 508(c) ("No State or political subdivision thereof may enact, prescribe, issue, continue in effect, or enforce any law" prohibiting, penalizing, or imposing "liability for furnishing or using" driver "safety performance records in accordance with" federal regulations.).

In *Morales* v. *Trans World Airlines, Inc.*, 504 U.S. 374 (1992), this Court was presented with one such federal statute, which "expressly pre-empts the States

from 'enact[ing] or enforc[ing] any law, rule, regulation, standard, or other provision having the force and effect of law relating to rates, routes, or services of any air carrier.' " *Id.* at 383 (quoting 49 U.S.C. App. 1305(a)(1) (1988)) (brackets in original). The Court applied that provision to invalidate state laws regulating air fare advertising, without suggesting that such an exercise of preemptive authority under the Supremacy Clause might somehow run afoul of the Tenth Amendment. See *id.* at 383-391; see also *Northwest, Inc.* v. *Ginsberg*, 134 S. Ct. 1422, 1428 (2014) (discussing *Morales*); *American Trucking Ass'ns, Inc.* v. *City of L.A.*, 133 S. Ct. 2096, 2102 (2013).

Petitioners argue that the Supremacy Clause is irrelevant to the anti-commandeering question because it is not a grant of authority to Congress. 13-967 Pet. 22; 13-980 Pet. 30. That argument misses the point. As the court of appeals held (Pet. App. 25a-30a) and petitioners no longer contest, Congress properly enacted PASPA pursuant to its commerce power. The Supremacy Clause demonstrates that the principles of federalism embodied in the Tenth Amendment are not offended by the enactment of federal legislation supported by one of Congress's enumerated powers that disables a State from pursuing regulatory goals otherwise within the State's competence. As the court of appeals pointed out, "[t]he import of [petitioners'] argument * * * is that impermissible []commandeering may occur even when all a federal law does is supersede state law via the Supremacy Clause." *Id.* at 31a. The court of appeals properly rejected that proposition.

Petitioners acknowledge that the federal government may divest state legislatures of the power to regulate in an entire field without thereby running afoul

of the anti-commandeering principle. But they suggest that Congress may do so only when it undertakes to impose its own regulatory requirements on the field. 13-967 Pet. 25; 13-979 Pet. 16, 22. Petitioners cite no authority for such a limitation on federal preemption. If Congress wishes to do so, it is free to preempt state regulation precisely in order to leave an area unregulated. But in any event, PASPA does not merely limit the regulatory reach of the States; it directly regulates private conduct as well, by prohibiting "person[s]" from sponsoring, operating, advertising, or promoting, "pursuant to the law or compact of a governmental entity," sports gambling schemes. 28 U.S.C. 3702(2).

c. Petitioners claim that Section 3702(1) poses the kind of concerns regarding political accountability that animated this Court's decisions in *New York* and *Printz*. 13-967 Pet. 18-19; 13-980 Pet. 26-27. But the federal laws at issue in *New York* and *Printz* created the risk that legislative and executive actions undertaken by a State at the direction of the federal government would be misunderstood to be the product of the State's own policy choices, while the federal government itself would escape accountability for the burdens of its regulatory programs by hiding behind the States. *See New York*, 505 U.S. at 168-169; *Printz*, 521 U.S. at 930.

Section 3702(1) does not pose those risks. There is no risk that the electorate will blame state legislators and officers for enacting or enforcing unpopular legislation, because PASPA does not require the States to take any legislative or executive action at all. If voters wonder why a State is not licensing or otherwise affirmatively authorizing sports gambling, they need look no further than PASPA's explicit prohibitions,

the clarity of which petitioners do not dispute. The risk of confusion regarding the reasons for a State's failure to act is no greater here than it is when federal law has preemptive force in a field of activity, preventing States from enacting legislation on a particular subject matter. In both instances, "it is the Federal Government that makes the decision in full view of the public, and it will be federal officials that suffer the consequences if the decision turns out to be detrimental or unpopular." *New York*, 505 U.S. at 168.[6]

d. Petitioners' anti-commandeering claim is directed solely at Section 3702(1), the provision of PASPA that disallows States from authorizing or licensing sports gambling schemes. As noted above, Section 3702(2) of PASPA independently prohibits private parties from conducting sports gambling under a State's aegis. The existence of that separate prohibition on private action in Section 3702(2) substantially diminishes the practical significance of petitioners' challenge to the constitutionality of Section 3702(1). For even if the Tenth Amendment did permit New Jersey to authorize and license sports gambling in contravention of Section 3702(1), New Jersey's casinos and racetracks could not engage in such gambling schemes without violating Section 3702(2). See Pet. App. 49a. Thus, state-sponsored sports betting will be unlawful in New Jersey regardless of how the constitutional challenge in this case is resolved. The

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[6] Indeed, the risk is even smaller here. The Court has allowed federal legislation to preempt a field even when the legislation contains no express provision to that effect. See, *e.g.*, *Arizona* v. *United States*, 132 S. Ct. 2492, 2501-2503 (2012). Here, the reason for the State's inaction is plain on the face of the federal law.

fact that PASPA will continue to prohibit private parties from conducting state-sponsored sports gambling under Section 3702(2) militates against further review of the court of appeals' decision regarding the constitutionality of Section 3702(1).

Petitioners suggest briefly that if Congress may not constitutionally prohibit States from authorizing sports gambling schemes under Section 3702(1), it follows that Congress may not prohibit private parties from engaging in state-authorized gambling under Section 3702(2). 13-967 Pet. 26-27. That suggestion is a non sequitur. While the Tenth Amendment limits the capacity of the federal government to regulate the States themselves, it does not "shield[] the States from pre-emptive federal regulation of *private* activities affecting interstate commerce." *Hodel* v. *Virginia Surface Mining & Reclamation Ass'n, Inc.*, 452 U.S. 264, 291 (1981). Congress is perfectly free to prohibit private parties from engaging in commercial activities that the States have chosen to authorize. See *id.* at 289-291. Nothing in *New York* or *Printz* suggests otherwise.[7]

2. Petitioners also renew their contention that PASPA violates principles of equal sovereignty by

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[7] Nor could petitioners colorably argue that Section 3702(1) is not severable from the rest of PASPA. Even in the absence of Section 3702(1), PASPA would continue to accomplish Congress's underlying goal of preventing the expansion of state-sponsored sports gambling. Cf. *New York*, 505 U.S. at 186-187 (holding take-title provision of Nuclear Waste Policy Act to be severable because "[t]he Act is still operative and it still serves Congress' objective" without the provision). And there is no evidence that Congress would have preferred to allow the wholesale expansion of state-sponsored sports betting throughout the United States in the absence of that provision.

grandfathering sports gambling schemes already in existence when PASPA was enacted. 13-967 Pet. 31-34; 13-979 Pet. 31-41. The court of appeals correctly rejected that contention. Pet. App. 53a-58a.

Petitioners ground their equal sovereignty claim primarily in this Court's recent decisions in *Northwest Austin Municipal Utility District No. One* v. *Holder*, 557 U.S. 193 (2009) (*Northwest Austin*), and *Shelby County* v. *Holder*, 133 S. Ct. 2612 (2013). But *Northwest Austin* and *Shelby County* involve "sensitive areas of state and local policymaking," and Congress was legislating in an area that "the Framers of the Constitution intended the States to keep for themselves"—"the power to regulate elections." *Shelby Cnty.*, 133 S. Ct. at 2623-2624 (citation omitted). As the court of appeals pointed out (Pet. App. 54a-55a), concerns for federal intrusion into state prerogatives have less salience where, as here, Congress is exercising the quintessentially federal power of regulating interstate commerce. While the Constitution expressly prescribes geographic uniformity in the exercise of certain legislative powers, the Commerce Clause is not among them. See *Currin* v. *Wallace*, 306 U.S. 1, 14 (1939) ("There is no requirement of uniformity in connection with the commerce power * * * such as there is with respect to the power to lay duties, imposts and excises."); see also *Hodel* v. *Indiana*, 452 U.S. 314, 332 (1981) ("A claim of arbitrariness cannot rest solely on a statute's lack of uniform geographic impact."); *Secretary of Agric.* v. *Central Roig Ref. Co.*, 338 U.S. 604, 616 (1950) (Under the Commerce Clause, Congress may devise "a national policy with

due regard for the varying and fluctuating interests of different regions.").[8]

Consistent with that principle, other legislation under the Commerce Clause has effectuated different treatment among the States. For instance, a provision in the Clean Air Act, 42 U.S.C. 7401 *et seq.*, has the effect of exempting only California from its preemption provisions regarding vehicle emission standards. See 42 U.S.C. 7543(b); *Motor Vehicle Mfrs. Ass'n of the U.S., Inc.* v. *New York State Dep't of Envtl. Conservation*, 810 F. Supp. 1331, 1337-1338 (N.D.N.Y. 1993). Similarly, the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 *et seq.*, exempts only Hawaii from its preemption provisions. See 29 U.S.C. 1144(b)(5). It is also routine for Congress to differentiate between or among States through long-standing and deep-rooted legislative practices such as the targeting of pilot programs and certain appropriations to particular States.[9]

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[8] Even in areas (unlike interstate commerce) where the Constitution does include a geographic uniformity requirement, the Court has held that "geographically defined classifications" are permitted, so long as there is not "actual geographic discrimination." *United States* v. *Ptasynski*, 462 U.S. 74, 84-85 (1983) (discussing the Uniformity Clause in Art. I, § 8, Cl. 1).

[9] Pilot programs and targeted appropriations can be done on a State-by-State basis. For example a recent program by the United States Department of Health and Human Services allowed pilot projects for at least three States related to chronic kidney disease. See 42 U.S.C. 280g-6 (Supp. V 2011). Similarly, funds have been appropriated only to certain States. See, *e.g.*, Office of Mgmt. & Budget, *List of Agencies in New Jersey*, http://earmarks.omb.gov/earmarks-public/2009-appropriations-by-state/state-title/NEW%20JERSEY.html (reporting designated appropriations to New Jersey for 2009) (last visited May 12, 2014).

Moreover, even in the uniquely sensitive sphere of state voting laws, *Northwest Austin* and *Shelby County* did not suggest that federal legislation may not distinguish among States. To the contrary, *Shelby County* reiterated that principles of equal sovereignty do not "operate[] as a *bar* on differential treatment" of States. 133 S. Ct. at 2624. Rather, with respect to Section 4 of the Voting Rights Act of 1965, the Court in *Shelby County* discerned no sufficient relationship between Section 4's coverage criteria and the relevant burdens imposed by the Act. See, *e.g.*, *id.* at 2629 (coverage formula has "no logical relation" to current conditions"); *id.* at 2628 ("the failure to establish even relevance is fatal"). Thus, it was not the fact that Section 4 differentiated among States that ran afoul of the Constitution but instead the criteria on which such differentiation was based.

Here, in contrast, the relationship between the statutory exceptions and Congress's underlying statutory goals is obvious and manifestly rational. The sports gambling schemes sanctioned by 28 U.S.C. 3704(a)(1) and (2) are those, and only those, that were already in operation when PASPA was enacted. See p. 3, *supra*. Congress thus balanced its desire to minimize the social and economic costs associated with state-sponsored sports gambling against the significant reliance interests of the few States where such gambling was already in operation.[10] Congress was

[10] It is noteworthy in this regard that PASPA does not permit any of the States in which sports gambling was already taking place to authorize or license new sports gambling schemes in the future. See p. 3, *supra*. The line drawn by PASPA's grandfathering provisions is thus not a line between favored and disfavored

under no constitutional obligation to ignore those reliance interests. The Court has recognized in a variety of constitutional contexts that "[t]he protection of reasonable reliance interests is not only a legitimate governmental objective: it provides an exceedingly persuasive justification." *Nordlinger* v. *Hahn*, 505 U.S. 1, 13-14 & n.4 (1992) (quoting *Heckler* v. *Mathews*, 465 U.S. 728, 746 (1984)). Thus, the court of appeals correctly held that, even if the principles relied on by this Court in *Northwest Austin* and *Shelby County* extend beyond the particular sphere of local voting laws to the inherently federal sphere of interstate commerce, PASPA's distinction between the maintenance of pre-existing sports gambling schemes in four States and the introduction of new ones throughout the country does not run afoul of those principles.[11]

Petitioners also suggest that the grandfathering provisions of PASPA are inconsistent with this Court's decision in *Coyle* v. *Smith*, 221 U.S. 559 (1911). 13-967 Pet. 20. In *Coyle*, the Court invalidated a federal law that conditioned Oklahoma's admission to the Union on the State's commitment not to relocate its capital for a period of time following its admission. 221 U.S. at 562-563. That legislation ran

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States, but rather a line between one class of sports gambling schemes (those already in existence) and another (future ones).

[11] We note that New Jersey itself drew a geographical distinction when it amended its own Constitution to remove the prior prohibition on sports gambling. As amended, New Jersey's constitution continues to prohibit wagering "on a college sport or athletic event that takes place in New Jersey or on a sport or athletic event in which any New Jersey college team participates regardless of where the event takes place." N.J. Const. Art. 4, § 7, Para. 2(D).

afoul of the deeply rooted equal footing doctrine, under which Congress may not impair the "fundamental attributes of state sovereignty when it admits new States into the Union." *Minnesota* v. *Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 204-205 (1999). That doctrine has no application to PASPA.

Finally, petitioners are not in a good position to complain that PASPA is discriminatory in that New Jersey was uniquely *advantaged* by the statute. As noted above, New Jersey was the only State permitted by PASPA to authorize new sports gambling after PASPA's enactment. See pp. 3-4, *supra*. New Jersey's free choice not to avail itself of that opportunity within the time offered should not now provide a basis for a claim of discriminatory treatment.

CONCLUSION

The petitions for writs of certiorari should be denied.

Respectfully submitted.

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, an unincorporated association, NATIONAL BASKETBALL ASSOCIATION, a joint venture, NATIONAL FOOTBALL LEAGUE, an unincorporated association, NATIONAL HOCKEY LEAGUE, an unincorporated association, and OFFICE OF THE COMMISSIONER OF BASEBALL, an unincorporated association doing business as Major League Baseball,

Plaintiffs,

v.

C.A. No. 12-cv-04947(MAS)(LHG)
Honorable Michael A. Shipp, U.S.D.J.
Honorable Lois H. Goodman, U.S.M.J.

DEFENDANT-INTERVENOR NEW JERSEY THOROUGHBRED HORSEMEN'S ASSOCIATION, INC.'S STATEMENT OF UNDISPUTED MATERIAL FACTS PURSUANT TO LOCAL RULE 56.1

CHRISTOPHER J. CHRISTIE, Governor of the State of New Jersey, DAVID L. REBUCK, Director of the New Jersey Division of Gaming Enforcement and Assistant Attorney General of the State of New Jersey, and FRANK ZANZUCCKI, Executive Director of the New Jersey Racing Commission,

Defendants,

and

STEPHEN M. SWEENEY, President of the New Jersey Senate, SHEILA Y. OLIVER, Speaker of the New Jersey General Assembly, and NEW JERSEY THOROUGHBRED HORSEMEN'S ASSOCIATION, INC.,

Defendants-Intervenors.

Pursuant to Local Rule 56.1, and in opposition to Plaintiffs' motion for summary judgment, defendant-intervenor New Jersey Thoroughbred Horsemen's Association, Inc. ("NJTHA") respectfully submits this Statement of Undisputed Material Facts.

RESPONSIVE STATEMENT TO PLAINTIFFS' STATEMENT OF MATERIAL FACTS

1. The NJTHA agrees with the statement made in Paragraph 1 of Plaintiffs' Statement of Undisputed Material Facts ("Plaintiffs' Statement").

2. The NJTHA disagrees with the statement made in Paragraph 2 of Plaintiffs' Statement inasmuch as it is an incomplete recitation of a provision of PASPA and the Court is respectfully referred to PASPA for an accurate and complete recitation of its provisions.

3. The NJTHA agrees in part with the statement made in Paragraph 3 of Plaintiffs' Statement. It would be more accurate, however, to state that PASPA purports to permit a professional sports organization or amateur sports organization (as those terms are defined in PASPA) to commence an action to enjoin a violation of section 3702 of PASPA if a competitive game of such professional sports organization or amateur sports organization (as those terms are defined in PASPA) is alleged to be the basis of such violation.

4. The NJTHA agrees in part with the statements made in Paragraph 4 of Plaintiffs' Statement.

It would be more accurate, however, to quote the entire Section 3704(a) for a complete recitation of its provisions regarding the instances in which Section 3702 of PASPA does not apply.

5. The NJTHA disagrees with the statements made in Paragraph 5 of Plaintiffs' Statement inasmuch as they are an incomplete recitation of the legislative history of PASPA and respectfully refers the Court to PASPA's legislative history for a complete recitation of the statements made in various committee meetings.

6. The NJTHA disagrees with the statements made in Paragraph 6 of Plaintiffs' Statement inasmuch as they are an incomplete recitation of the legislative history of PASPA and respectfully refers the Court to PASPA's legislative history for a complete recitation of the statements made in various committee meetings.

7. The NJTHA disagrees with the statements made in Paragraph 7 of Plaintiffs' Statement inasmuch as they are an incomplete recitation of the legislative history of PASPA and respectfully refers the Court to PASPA's legislative history for a complete recitation of the statements made in various committee meetings.

8. The NJTHA disagrees with the statements made in Paragraph 8 of Plaintiffs' Statement inasmuch as they are an incomplete recitation of the legislative history of PASPA and respectfully refers the Court to PASPA's legislative history for a complete

recitation of the statements made in various committee meetings.

9. The NJTHA disagrees with the statements made in Paragraph 9 of Plaintiffs' Statement inasmuch as they are an incomplete recitation of the legislative history of PASPA and respectfully refers the Court to PASPA's legislative history for a complete recitation of the statements made in various committee meetings.

10. The NJTHA agrees in part with the statement made in Paragraph 10 of Plaintiffs' Statement. It would be more accurate, however, to quote the entire amendment to Article IV, Section VII, paragraph 2 of the New Jersey Constitution for a full recitation of its terms.

11. The NJTHA agrees in part with the statement made in Paragraph 11 of Plaintiffs' Statement. It would be more accurate, however, to quote the entire former version of Article IV, Section VII, paragraph 2 of the New Jersey Constitution (before the December 2011 amendment) for a full recitation of its terms.

12. The NJTHA agrees in part with the statement made in Paragraph 12 of Plaintiffs' Statement. It would be more accurate, however, to quote the entire amendment to Article IV, Section VII, paragraph 2 of the New Jersey Constitution for a full recitation of its terms.

13. On information and belief, the NJTHA agrees with the statement made in Paragraph 13 of Plaintiffs' Statement.

14. The NJTHA agrees with the statement made in Paragraph 14 of Plaintiffs' Statement.

15. The NJTHA agrees in part with the statements made in Paragraph 15 of Plaintiffs' Statement. It would be more accurate, however, to quote the entire Sports Gambling Law referenced therein for a complete recitation of its provisions.

16. The NJTHA agrees in part with the statements made in Paragraph 16 of Plaintiffs' Statement. It would be more accurate, however, to quote the entire Sports Gambling Law referenced therein for a complete recitation of its provisions.

17. The NJTHA agrees in part with the statements made in Paragraph 17 of Plaintiffs' Statement. It would be more accurate, however, to quote the entire Sports Gambling Law referenced therein for a complete recitation of its provisions.

18. The NJTHA agrees in part with the statements made in Paragraph 18 of Plaintiffs' Statement. It would be more accurate, however, to quote the entire Sports Gambling Law referenced therein for a complete recitation of its provisions.

19. On information and belief, the NJTHA agrees with the statement made in Paragraph 19 of Plaintiffs' Statement.

20. On information and belief, the NJTHA agrees with the statement made in Paragraph 20 of Plaintiffs' Statement.

21. On information and belief, the NJTHA agrees with the statement made in Paragraph 21 of Plaintiffs' Statement.

22. The NJTHA disagrees with the statement made in Paragraph 22 of Plaintiffs' Statement inasmuch as it is an inaccurate description of a statement made in the article referenced in Paragraph 22 of Plaintiffs' Statement and the NJTHA respectfully refers the Court to that article for the complete report made therein and for the full statements that were purportedly made by the individuals quoted therein.

SUPPLEMENTAL STATEMENT OF MATERIAL FACTS

23. The NJTHA has more than 3,000 members, consisting of thoroughbred horse owners and horse trainers from around the world. Verified Answer and Affirmative Defenses ¶36.

24. The NJTHA is also the licensed operator and permit holder of Monmouth Park Racetrack, a thoroughbred racetrack located in Oceanport, New Jersey ("Monmouth Park"). Id.

25. As a racetrack operator and permit holder the NJTHA has the legal right, pursuant to New Jersey law, subject to the regulations of the New Jersey Division of Gaming Enforcement and the New Jersey Racing Commission, to engage in the business of accepting wagers on the results of certain professional and amateur sports events. Id.

26. The NJTHA intends to exercise its legal right to accept wagers on the results of certain professional

and amateur sports events pursuant to New Jersey law, subject to the regulations of the New Jersey Division of Gaming Enforcement and the New Jersey Racing Commission. Id.

27. On or about October 28, 1992, Congress enacted the Professional and Amateur Sports Protection Act ("PASPA"), codified at 28 U.S.C. §3701, *et seq*.

28. Prior to the enactment of PASPA, the United States Department of Justice, in letters dated September 24, 1991 to then Senator Joseph Biden, then Chairman of the Senate Judiciary Committee, and then Senator Dennis DeConcini, a then member of the Senate Judiciary Committee, formally opposed enactment of PASPA based on the fact that, inter alia, PASPA raised federalism issues for the reasons that it was an intrusion by the federal government upon the States' sovereign rights to decide how to raise revenues for themselves; to decide for themselves what gambling policies to enact; and because PASPA empowered private sports organizations to enforce PASPA's provisions by suing States in federal courts. Verified Answer and Affirmative Defenses, Exhibits C and D.

29. Thoroughbred racing in New Jersey provides substantial economic and other benefits to the general public, creates employment opportunities for thousands of people, and generates substantial revenues for the State of New Jersey. Verified Answer and Affirmative Defenses ¶48.

30. Monmouth Park is an integral part of all aspects of the equine industry in New Jersey. Id.

31. If Monmouth Park is forced to close it will mean the death of the thoroughbred racing industry in New Jersey. Id.

32. Wagering on New Jersey Thoroughbred and Standardbred horse races in New Jersey has waned in recent years resulting in the loss of jobs as well as causing economic distress to the equine industry in New Jersey, especially to Monmouth Park. Verified Answer and Affirmative Defenses ¶49.

33. The NJTHA believes that sports betting is an essential component of the NJTHA's overall plan to make Monmouth Park an economically self-sustaining Thoroughbred Racetrack, better able to compete with racetracks in surrounding States that are bolstered by casino revenues. Id.

34. The New Jersey equine industry is critical to New Jersey's economy and the preservation of open space in New Jersey. In a Report, prepared by Karyn Malinowski, Ph.D. of the Rutgers Equine Science Center, it was concluded that if racing-related and breeding farms in New Jersey were to cease operations it would have a $780 million negative annual impact, put 7,000 jobs in danger, eliminate $110 million in tax revenues, and leave over 163,000 acres of open space vulnerable to future development. Verified Answer and Affirmative Defenses ¶50.

35. The competitive disadvantages created by PASPA's exemption, in favor of four (4) States, from PASPA's prohibition against sports betting, especially neighboring Delaware, has combined with other fac-

tors to put the New Jersey horse industry, and Monmouth Park in particular, at such a severe disadvantage that the economic viability of the New Jersey horse industry and Monmouth Park has been and continues to be seriously damaged. Verified Answer and Affirmative Defenses ¶51.

36. On November 8, 2011 New Jersey citizens, by a 64% - 36% margin, voted to amend the New Jersey Constitution so as to authorize the New Jersey Legislature to enact a law allowing wagering on certain sporting events at Atlantic City casinos and at horse racetracks in New Jersey, including Monmouth Park. Verified Answer and Affirmative Defenses ¶52.

37. The voter referendum, approved by New Jersey voters, provided as follows:

"Shall the amendment to Article IV, Section VII, paragraph 2 of the Constitution of the State of New Jersey, agreed to by the Legislature, providing that it shall be lawful for the Legislature to authorize by law wagering at casinos or gambling houses in Atlantic City and at current or former running and harness horse racetracks on the results of professional, certain college, or amateur sport or athletic events, be approved?"

Id.

38. On December 8, 2011, Article IV, Section VII, paragraph 2 of the New Jersey Constitution was amended in conformity with the voter referendum. Verified Answer and Affirmative Defenses ¶53.

39. The Amendment provides:

> It shall also be lawful for the Legislature to authorize by law wagering at casinos or gambling houses in Atlantic City on the results of any professional, college, or amateur sport or athletic event, except that wagering shall not be permitted on a college sport or athletic event that takes place in New Jersey or on a sport or athletic event in which any New Jersey college team participates regardless of where the event takes place;
>
> * * *
>
> It shall also be lawful for the Legislature to authorize by law wagering at current or former running and harness horse racetracks in this State on the results of any professional, college, or amateur sport or athletic event, except that wagering shall not be permitted on a college sport or athletic event that takes place in New Jersey or on a sport or athletic event in which any New Jersey college team participates regardless of where the event takes place.

N.J. Const. art. IV, §7, cl. 2(d) and 2(f).

40. On January 17, 2012 the Governor of New Jersey signed into law an Act supplementing Title 5 of the Revised Statutes and amending P.L. 1977, C. 110 and P.L. 1992, C. 9, "permitting wagering at casinos and racetracks on the results of certain professional or collegiate sports or athletic events" (hereinafter "New Jersey's Sports Betting Law"). Verified Answer and Affirmative Defenses ¶54.

41. It is contemplated that a portion of the tax revenues generated from New Jersey's Sports Betting Law will be used to benefit senior and disabled New Jersey citizens as well as help to offset New Jersey State budget shortfalls. Id.

42. It is further contemplated that profits from New Jersey's Sports Betting Law will promote the economic survival of Monmouth Park, the profitability of New Jersey casinos, the economic viability of the New Jersey horse industry, and the creation of jobs. Id.

43. There is an actual threat of an injunction being entered against the NJTHA based on the NJTHA's decision to conduct wagering on sports events at Monmouth Park pursuant to New Jersey's Sports Betting Law and implementing regulations. Verified Answer and Affirmative Defenses ¶55.

44. Declaratory relief is necessary to assist the NJTHA in its ability to make responsible decisions about its future as it moves forward with its plans to implement sports wagering in accordance with New Jersey's Sports Betting Law and implementing regulations. Id.

45. The actual threat of an injunction against the NJTHA is based on this lawsuit filed by the Plaintiffs herein seeking Declaratory and Injunctive Relief. Id.

Respectfully submitted,

McElroy, Deutsch, Mulvaney & Carpenter, LLP

By: /s/ Ronald J. Riccio
Ronald J. Riccio
McElroy, Deutsch, Mulvaney & Carpenter, LLP
1300 Mount Kemble Avenue
Post Office Box 2075
Morristown, New Jersey
07962-2075
(973) 993-8100

Attorneys for Defendant-Intervenor
New Jersey Thoroughbred Horsemen's Association, Inc.

Dated: December 13, 2012

* * *

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, et al., Plaintiffs, v. CHRISTOPHER J. CHRISTIE, et al., Defendants.	C.A. NO. 3:14-cv-6450 Honorable Michael A. Shipp, U.S.D.J. Honorable Lois H. Goodman, U.S.M.J.

CERTIFICATION OF MICHAEL MUSTO, EXECUTIVE DIRECTOR OF THE NEW JERSEY THOROUGHBRED HORSEMEN'S ASSOCIATION

MICHAEL MUSTO, of full age, certifies as follows:

1. I am the Executive Director of the New Jersey Thoroughbred Horsemen's Association, hereinafter referred to as "NJTHA" and make this Certification in opposition to an application made by the NCAA, NBA, NHL, NFL and Major League Baseball for a Temporary Restraining Order attempting to stop Monmouth Park from accepting sports wagers on October 26.

2. The NJTHA took over the exclusive operations of Monmouth Park Racetrack from the NJ SEA in 2012 following Governor Christie's decision to privatize Monmouth Park Racetrack. The NJTHA has the exclusive right to, and does in fact, use, occupy and

operate the racetrack premises and has the exclusive right to, and does in fact, manage the business affairs and any related enterprises at Monmouth Park.

3. The NJTHA has a long term management agreement with Darby Development, LLC. This agreement gives Darby Development, LLC the right to exclusively manage Monmouth Park Racetrack, develop the racetrack properties and manage and operate any additional gaming business for revenue generating purposes at Monmouth Park.

4. The horseracing industry in New Jersey is going through hard times. When the decision was made by the State to privatize racing, Monmouth Park was on the verge of being closed. The only chance of preserving live thoroughbred racing in the State was for the NJTHA to undertake a losing venture and attempt to turn it around. The State was losing $12 million a year when the decision was made to privatize the track. Although the operational losses from Monmouth Park have been significantly reduced, the track still experiences heavy losses. We have been holding on for years hoping to obtain alternative revenue sources. There are no state subsidies.

5. The only business revenue stream which can save Monmouth Park at the present time is revenue from sports betting.

6. In anticipation of being able to offer sports betting in the State of New Jersey, the NJTHA entered into an agreement with the leading sports betting company in the world, William Hill. I attach hereto as Exhibit A the memorandum prepared by

William Hill which describes the business operations of William Hill.

7. Monmouth Park, through the NJTHA, is the founding member of a private regulatory body called The Independent Sports Wagering Association. The Association is designed to provide integrity and protect the public with respect to sports betting. We have communicated with the other racetracks and casinos. They have been invited to join the Association if and when they elect to participate in sports betting.

8. Monmouth Park will suffer significant irreparable harm if this Court, even temporarily, enjoins its planned commencement of sports gambling on October 26, 2014. Monmouth Park has publicly announced that beginning October 26, 2014 there will be sports betting at the racetrack. As many as 10,000 patrons are expected to visit Monmouth Park on that day to engage in sports betting. This is a major event in Monmouth Park's history and represents the beginning of a renaissance for the track. Elaborate plans have been made involving hundreds of workers and thousands of dollars. If this event is enjoined, negative repercussions will ensue, including a loss of credibility for Monmouth Park, damage to its good will, and a stain on its reputation from which it would be difficult to recover.

9. Acting Attorney General, John Hoffman, issued Law Enforcement Directive #2014-1, after which Anthony Dreyer, Counsel for the Sports Leagues, requested that Monmouth Park provide him with a letter agreeing to stand down from accepting sports wa-

gers for 45 days in order to facilitate the League's filing an application to the court with respect to sports betting. On September 10, 2014, Monmouth Park Racetrack furnished Mr. Dreyer with a letter dated September 10, 2014, attached as Exhibit B, agreeing not to begin accepting sports wagers sooner than 45 days from September 10, 2014. Given that we provided the Leagues with a 45 day moratorium and the Leagues clearly knew that we would only stand down for 45 days, it would cause irreparable harm to Monmouth Park and the NJTHA for the Leagues at this late juncture to seek a TRO. In anticipation of accepting sports wagers on October 26, the NJTHA put into full operation a plan to be ready by October 26, including, but not limited to, hiring personnel to operate the sports betting operation, purchasing equipment, ordering phone lines, internet connections, developing protections for the public, rules and regulations for private regulation, putting a team together for the operational end to provide security to protect the public and operate effectively as well as spending additional significant costs to prepare to offer bets beginning Sunday, October 26, 2014.

10. I respectfully request Your Honor deny the Leagues' application for a Temporary Restraining Order.

I certify under penalty of perjury that the foregoing is true and correct.

Dated: October 22, 2014

_____

MICHAEL MUSTO
Executive Director, NJTHA

EXHIBIT A

Overview of William Hill

- Leading sports betting company in the world, founded in 1934
- Licensed and regulated in UK, Gibraltar, Australia, Italy, Spain, US
- Additional operations in Bulgaria, Israel and Philippines
- Leading US sports book operator, licensed by Nevada Gaming Commission
- Operate 103 sports books; 55% of Nevada locations
- Nevada's leading mobile sports betting application
- Technology provider to most major Nevada casinos
- Exclusive risk manager for Delaware Sports Lottery
- Agreement with Monmouth Park
- Listed on the London Stock Exchange (WMH.L)
- Market Capitalization $5bn
- FY13 Revenue $2.5bn, FY13 Operating Profit $560m
- $13bn wagered in 2013
- A household name in the UK
- No. 1 operator of betting shops in the UK with over 2,400 shops
- Leading online operator
- 17,000 employees worldwide; over 400 in US

EXHIBIT B

MONMOUTH PARK

September 10, 2014

Mr. Dreyer,

We can state affirmatively that Monmouth Park/ Darby Development LLC has no plans to begin operating a sports pool immediately, and will not begin operating a sports pool sooner than 45 days from today.

Respectfully,

Robert J. Kulina
President
Monmouth Park Racetrack

McElroy, Deutsch, Mulvaney & Carpenter, LLP
1300 Mount Kemble Avenue
Post Office Box 2075
Morristown, New Jersey 07962-2075
(973) 993-8100
Attorneys for New Jersey Thoroughbred Horsemen's Association, Inc.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, et al, Plaintiffs, v. CHRISTOPHER J. CHRISTIE, et al., Defendants	C.A. NO. 3:14-cv-6450 Honorable Michael A. Shipp, U.S.D.J. Honorable Lois H. Goodman, U.S.M.J. **CERTIFICATION OF ROBERT J. KULINA IN OPPOSITION TO PLAINTIFFS' APPLICATION FOR A TEMPORARY RESTRAINING ORDER**

ROBERT J. KULINA, of full age, hereby certifies as follows:

1. I am President of Darby Development, LLC, a management company, acting on behalf of the New Jersey Thoroughbred Horsemen's Association, hired

to operate Monmouth Park Racetrack. I submit this Certification in opposition to the application by plaintiffs for a temporary restraining order. I am familiar with the facts and information set forth herein.

2. Monmouth Park was founded in 1870 and has been in continuous operation since 1946. It is a highly respected attraction in New Jersey and is regarded as one of the premier facilities in North America. Patrons hold high expectations for Monmouth. Failure to offer sports wagering on October 26, 2014 would be damaging to Monmouth's reputation.

3. On or about October 17, 2014, Monmouth Park announced it would begin taking sports bets on October 26, 2014. Since that time, immense national media attention has been attracted, including, but not limited to, the Associated Press, *The New York Times*, ABC News, CBS News, Fox News, NBC News, ESPN and Social Media (Facebook and Twitter). In light of the extensive media coverage and public expectation of sports wagering at Monmouth Park on October 26, 2014, any failure to fulfill that expectation will significantly hurt our ability to operate in the future, damage our credibility and have a materially adverse dollar effect on our business operations.

4. Considerable staffing needs have been allocated not only in preparation for October 26, 2014, including, but not limited to: carpenters, electricians, ticket-takers, wagering supervisors, cleaning, security, and guest services, all who have, and continue to work tirelessly to prepare Monmouth Park for a crowd that could easily exceed 10,000 people. Additionally,

outside police preparations have been made regarding traffic and patron control.

5. Patron security is paramount at Monmouth Park. If wagering is enjoined, thousands of patrons may still come to Monmouth on October 26, 2014, unbeknownst that sports wagering will not take place. It is reasonable to assume that some of these patrons could become unruly. This has potentially dangerous consequences and would need to be monitored closely by security/police. These patrons are not likely to visit Monmouth Park again.

I certify under penalty of perjury that the foregoing is true and correct.

ROBERT KULINA

Dated: October 21, 2014

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, et al, Plaintiffs, v. CHRISTOPHER J. CHRISTIE, et al,: Defendants.	C.A. NO. 3:14-cv-6450 Honorable Michael A. Shipp, U.S.D.J. Honorable Lois H. Goodman, U.S.M.J. **CERTIFICATION OF DENNIS A. DRAZIN IN OPPOSITION TO PLAINTIFFS' APPLICATION FOR A TEMPORARY RESTRAINING ORDER**

DENNIS A. DRAZIN, of full age, hereby certifies as follows:

1. I am the advisor to NJTHA and Monmouth Park Racetrack.

2. Based on publicly-available information from the Nevada Gaming Control Board, my understanding is that approximately $3,622,000,000 was legally wagered on sports events during 2013 at Nevada sports books and approximately $202,838,000 was won by Nevada sports books in 2013.

3. On information and belief, a mature New Jersey sports betting market would be approximately three times the size of the Nevada market once sports betting is fully-implemented at New Jersey's racetracks and casinos.

4. I have prepared a chart, which is attached as Exhibit A, that shows the weekly profits that Monmouth Park would lose if it is not permitted to commence accepting sports wagers on October 26.

5. Based on the foregoing, I estimate that the lost weekly profit to Monmouth Park in the event sports wagering is not permitted to commence on October 26 is $1,170,219.

I certify under penalty of perjury that the foregoing is true and correct.

_____

Dennis A. Drazin

Dated: October 22, 2014

EXHIBIT A

Nevada Handle 2013		$3,622,107,143	Margin
Nevada Win 2013		$202,838,000	5.6%
NJ - 3x Nevada handle		$10,866,321,429	
NJ - 3X Nevada win		$608,514,000	
Monmouth Share - 10% Handle		$1,086,632,143	
Monmouth Share - 10% Win		$60,851,400	
Monmouth Share - Handle	Weekly	$20,896,772	
Monmouth Share - Win	Weekly	$1,170,219	

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CIVIL ACTION NUMBER:
3:12-cv-04947-MAS-LHG
3:14-cv-14-6450-MAS-LHG

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, an unincorporated association, NATIONAL BASKETBALL ASSOCIATION, a joint venture, NATIONAL FOOTBALL LEAGUE, an unincorporated association, NATIONAL HOCKEY LEAGUE, an unincorporated association, and OFFICE OF THE COMMISSIONER OF BASEBALL, an unincorporated association doing business as Major League Baseball,

Plaintiffs,

-vs-

CHRISTOPHER J. CHRISTIE, Governor of the State of New Jersey, DAVID L. REBUCK, Director of the New Jersey Division of Gaming Enforcement and Assistant Attorney General of the State of New Jersey, and FRANK ZANZUCCKI, Executive Director of the New Jersey Racing Commission, NEW JERSEY THOROUGHBRED HORSEMEN'S ASSOCIATION, INC., and NEW JERSEY SPORTS AND EXPOSITION AUTHORITY,

Defendants.

Clarkson S. Fisher United States Courthouse
402 East State Street
Trenton, New Jersey 08608
October 24, 2014

B E F O R E: HONORABLE MICHAEL A. SHIPP
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

SKADDEN, ARPS, SLATE, MEAGHER & FLOM,
ESQUIRES BY: JEFFREY MISHKIN, ESQUIRE

and

ANTHONY J. DREYER, ESQUIRE
Attorneys for the Plaintiffs.

MCCARTER & ENGLISH, ESQUIRES
BY: RICHARD HERNANDEZ, ESQUIRE

and

WILLIAM J. O'SHAUGHNESSY, ESQUIRE
Attorneys for the Plaintiffs.

GIBSON, DUNN & CRUTCHER, ESQUIRES
BY: MATTHEW MCGILL, ESQUIRE
Attorneys for the Defendant.

OFFICE OF THE ATTORNEY GENERAL
BY: JEFFREY JACOBSON, ESQUIRE
Attorneys for the Defendant.

MCELROY, DEUTSCH, MULVANEY & CARPENTER, ESQUIRES
BY: RONALD J. RICCIO, ESQUIRE
Attorneys for the Defendant.

GIBBONS, PC
BY: MICHAEL R. GRIFFINGER, ESQUIRE
and
THOMAS VALEN, ESQUIRE
Attorneys for the Defendant.

Certified as True and Correct as required by Title 28, U.S.C., Section 753

/S/ Cathy J. Ford, CCR, CRR, RPR

DECISION

[3] (Attorneys are in attendance via telephone conference.)

THE DEPUTY COURT CLERK: All rise.

(Open court begins at 4:42 p.m.)

THE COURT: Please be seated. Good afternoon.

We are here, and we are on the record, in the matter of the NCAA versus Chris Christie, Docket Number 12-4947 and Civil Action Number 14-6450.

Who's on the line today for the plaintiff Leagues?

MR. MISHKIN: Your Honor, it's Jeffrey Mishkin and Anthony Dreyer from Skadden Arps for the plaintiffs in both actions.

MR. HERNANDEZ: Your Honor, you also have Richard Hernandez from McCarter and English for the plaintiffs on both actions.

MR. O'SHAUGHNESSY: William O'Shaughnessy from McCarter also, Judge.

THE COURT: Who's on for the state defendants?

MR. MCGILL: Your Honor, this is Matthew McGill from Gibson, Dunn and Crutcher for the state defendants. And I'm joined by Jeffrey Jacobson from the Division of Law, Office of the Attorney General.

THE COURT: Who's on for the Horsemen's Association?

MR. RICCIO: Your Honor, it's Ron Riccio. We are here on 6450. Also, Elliott Berman and Mr. Drazin who is [4] representing the client. He is a client and he's appearing as a person of the client.

THE COURT: Who's on for the Sports and Exposition Authority?

MR. GRIFFINGER: Your Honor, Michael Griffinger, Peter Torcicollo and Thomas Valen from Gibsons. And we're also on behalf of the legislature defendants.

THE COURT: Is there anyone else on the line today that wants to enter an appearance?

MR. PHIBBS: Your Honor, this is Peter Phibbs from the United States Department of Justice, Civil Division just to inform the Court that we are on the line.

THE COURT: Okay. Well, as I've indicated in the text order that I issued earlier today, there will be no oral argument in this matter. I have read the papers and I'm going to put my decision on the record at this time.

As provided in the Court's text order, the Court will not hear oral argument and it will move directly to ruling on the plaintiffs' application for a temporary restraining order. Due to the emergent nature of plaintiffs' application, the Court scheduled this conference to place a decision on the record. Please note: For purposes of expediency, I will not read all of the citations onto the record. The citations will be included in full on the actual transcript, which you may order.

[5] **1. Preliminary Statement**

Sports betting at New Jersey's casinos and racetracks continues to be a priority for the state. Sports betting has garnered the support of voters, legislators from across both sides of the aisle, and Governor

Christie. In 2012, New Jersey enacted a Sports Wagering Law, N.J. Stat. Ann. Section 5:12A-1 *et seq.*

On February 28, 2013, after careful consideration of the positions advanced during the course of high-quality litigation, this Court found in what we're calling "*Christie I*" that New Jersey's 2012 Sports Wagering Law conflicted with the Professional and Amateur Sports Protection Act, or PASPA, and entered a permanent injunction. The Third Circuit affirmed this Court's decision. In its de novo review, the Third Circuit discussed New Jersey's ability to repeal its prohibitions on sports wagering. The United States Supreme Court declined to hear the appeal.

On September 8, 2014, New Jersey's Acting Attorney General issued a Law Enforcement Directive to all New Jersey law enforcement personnel regarding the 2012 Sports Wagering Law. The Directive concluded that, based on the severability provision of the 2012 Sports Wagering Law, the central provisions of the Law that establish that casinos or racetracks may operate sports pools remain in effect and exempted such activity from criminal and civil liability. [6] (Defs.' Clarification/Modification Motion 1-2, 12-4947, ECF No. 161.) On the same day, defendants filed a motion requesting that the Court clarify its injunction or modify its injunction to conform to the Third Circuit's decision. (Id. At 8-9.) Defendants then secured a moratorium on the implementation of the Directive. The moratorium is scheduled to expire tomorrow, October 25, 2014.

On October 9, 2014, one day before the due date on its clarification reply brief, the state requested an extension until October 17, 2014 to file its brief. (Oct. 9, 2014 Request 2, 12-4947, ECF No. 168.) According to the state, "defendants' extension [was] warranted

because plaintiffs and intervenor filed two separate briefs raising a number of new arguments, including several issues of fact that require investigation." The Court granted the state's request for an extension.

The state did not submit its reply brief on October 17th. Rather, on October 17th the state filed correspondence at 3:58 p.m. that withdrew its motion for clarification or modification. In addition, the state notified the Court that Governor Christie signed into New Jersey Senate Bill 2460, what I'm calling the 2014 law. According to the state, the Law repealed all state laws and regulations that previously barred certain sports wagering activities at consenting casinos and racetracks in New Jersey [7] by persons 21 years of age and older. (Oct. 17, 2014 Ltr., ECF No. 173.) The present litigation, what I'm calling "*Christie II*," ensued.

2. Procedural History here as to the TRO

On Monday, October 20, 2014 with the moratorium on sports gambling set to expire in one week and no indication that defendants would be willing to secure an extension, plaintiffs filed a Verified Complaint. On Tuesday, October 21, 2014, the Court conducted a telephone status conference on the record regarding the briefing schedule for plaintiffs' application for temporary restraints. During the conference, counsel for the New Jersey Thoroughbred Horsemen's Association, or NJTHA, confirmed that Monmouth Park planned to start accepting bets on Sunday, October 26, 2014. Plaintiffs filed an Order to Show Cause with temporary restraints at 3:03 p.m. on Tuesday, October 21st, in both *Christie I* and *Christie II*. The New Jersey Sports and Exposition Authority, or NJSEA, the NJTHA, and the state defendants sub-

mitted their briefs in opposition in *Christie II* on October 22, 2014 at 10:16 p.m., 11:27 p.m. and 11:47 p.m., respectively. The legislature defendants submitted an opposition brief in *Christie I* at 11:30 p.m. Plaintiffs submitted their reply brief in both matters on October 23, 2014 at 3:42 p.m. As such, the parties afforded the Court an extremely limited amount of time to render this decision. Accordingly, the Court is issuing an [8] oral opinion in lieu of a written decision.

3. The TRO

Preliminary injunctive relief is "an extraordinary remedy" and "should be granted only in limited circumstances." *Kos Pharms., Inc. v. Andrx Corp.*, 369 F.3d 700, 708 (3d Cir. 2004)(citation omitted). The grant or denial of a temporary restraining order is within the discretion of the Court. *See West Indian Co., Ltd. v. Gov't of Virgin Islands*, 812 F.2d 134, 135 (3d Cir. 1987).

"One of the goals of the [temporary restraining order] analysis is to maintain the status quo, defined as the last, peaceable, noncontested status of the parties." *Kos Pharm., Inc.*, 369 F.3d at 708 (citation and quotation omitted.) In order to obtain a temporary restraining order, the movant has the burden of showing: (1) a reasonable likelihood of success on the merits; (2) irreparable injury if relief is denied; (3) public interest in favor of the temporary restraining order; and (4) a balance of hardships in its favor. *K.A. ex rel. Ayers v. Pocono Mountain Sch. Dist.*, 710 F.3d 99, 105 (3d Cir. 2013).

While a temporary restraining order is an extraordinary remedy, after consideration of the papers submitted and in light of these four factors, the Court con-

cludes that plaintiffs are entitled to a temporary restraining order to maintain the status quo pending full [9] consideration of their application for a preliminary injunction.

A. Likelihood of Success on the Merits

The Court must determine whether plaintiffs have shown that they are reasonably likely to succeed on the merits. This requires "a showing of a reasonable probability, not the certainty, of success on the merits. *SK & F, Co. v. Premo Pharm. Labs., Inc.*, 625 F.2d 1055, 1066 (3d Cir. 1980). Plaintiffs contend that the 2014 Law violates the restrictions imposed by PASPA, as delineated by the Third Circuit. Thus, the Court, in evaluating the merits of plaintiffs' claim, is guided by the Third Circuit's decision in *Christie I*, 730 F.3d 208 (3d Cir. 2013).

As did the Third Circuit, the Court begins its analysis of the merits with a review of PASPA. PASPA states that:

> [i]t shall be unlawful for. . . a governmental entity to sponsor, operate, advertise, promote, license, or authorize by law or compact. . . a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly. . . on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games.

[10] 28 U.S.C. Section 3702. As the Third Circuit highlighted, "PASPA's purpose is to 'prohibit sports gambling conducted by, or authorized under the law of, any state or governmental entity' and to 'stop the

spread of state-sponsored sports gambling." *Christie I*, 730 F.3d at 216.

In *Christie I*, this Court and the Third Circuit held that PASPA was constitutional. In so doing, both courts held that PASPA did not violate the anti-commandeering principle derived from the Tenth Amendment. In explaining the reach of the anti-commandeering principle, the Court outlined what a state legislature may or may not do under the terms of PASPA. The Third Circuit, in interpreting PASPA, determined that the law does not require New Jersey to maintain its own prohibition on sports betting, and therefore, the law does not violate the anti-commandeering principle. Instead, according to the Third Circuit, New Jersey may either maintain its prohibition, or it may repeal it. By presenting the state with this choice, the Third Circuit held that the law did not require the state to take any affirmative action and thus does no impinge on its sovereignty.

Defendants advance the position that the Third Circuit's reading of PASPA permits New Jersey to repeal its prohibition on sports betting and allow sports betting in the state, but only in such a way that certain rules are kept in place. There can be no dispute that the 2014 Law is styled as [11] a "repeal," and as a result, at first blush, it appears to be an attempt to comply with the Third Circuit's interpretation of PASPA in Christie I. Yet, as plaintiffs argue, the 2014 Law repeals prohibitions on sports wagering in the state only so much, so that the state may keep some restrictions over the activity. The 2014 Law contains several exclusions from its repeal, with the resulting effect that: (1) no one under the age of 21 may bet on sports; (2) sports betting is not permitted anywhere but in Atlantic City casinos or current or former horse

racetracks; (3) betting is not permitted on college games in New Jersey; and (4) betting is not permitted on college teams from New Jersey. The 2014 Law, however, says nothing in regards to the other generally applicable gaming regulations under which sports betting in New Jersey will likely fall.

Plaintiffs argue that the limitations of the 2014 Law are contrary to the Third Circuit's holding in *Christie I*, which stated that a lawful repeal necessitated a "complete deregulation of that field," and thus the state has lent its imprimatur to sports betting in contravention of the policy behind PASPA. In their opposition briefs, defendants argue that plaintiffs may not now rely on a different interpretation of PASPA than the one they, and the United States, relied on in *Christie I*. Defendants assert that plaintiffs' current position in *Christie II* may be contrary to a position offered [12] by the United States in *Christie I*. The United States is not a party to this matter and defendants have not demonstrated that the Leagues should be bound to the United States' arguments in Christie I on this emergent application for a temporary restraining order.

At this stage of the proceedings, the Court cannot read the Third Circuit's opinion in *Christie I* in such a way as to render the purpose of PASPA null. Accordingly, the Court finds that plaintiffs have established a reasonable likelihood of success on the merits with respect to the violation of PASPA, and as a result the Court need not consider whether plaintiffs have demonstrated a likelihood of success on its other claims.

B. Irreparable Harm

The Court must also consider the extent to which plaintiffs will suffer irreparable injury if the temporary restraining order is denied. "Grounds for irreparable injury include loss of control of reputation, loss of trade, and loss of good will," as well as the likelihood of confusion. *Pappan Enter., Inc. v. Hardee's Food Sys., Inc.*, 143 F.3d 800, 805 (3d Cir. 1998). Irreparable harm "must be of a peculiar nature, so that compensation in money [alone] cannot atone for it." *Morton v. Beyer*, 822 F.2d 364, 372 (3d Cir. 1987)(citation omitted). "[M]ore than a risk of irreparable harm must be demonstrated." *Cont'l Group, Inc. v. Amoco* [13] *Chems. Corp.*, 614 F.2d 351, 359 (3d Cir. 1980). Instead, "a clear showing of immediate irreparable injury or a presently existing actual threat" is needed. *Amoco Chems. Corp.*, 614 F.2d at 359 (citation omitted). Although the Third Circuit has found that a showing of potential harm to a plaintiff's reputation may be insufficient alone to warrant a preliminary injunction, when the reputation of the plaintiff is "directly endangered by the defendant's actions," reputational injury may constitute irreparable harm. *Bennington Foods LLC v. St. Croix Renaissance, Grp., LLP*, 528 F.3d 176, 179-80 (3d Cir. 2008).

The Third Circuit has already confirmed the constitutionality of PASPA. PASPA's purpose is clear: "to 'prohibit sports gambling conducted by, or authorized under the law of, any state or governmental entity' and to 'stop the spread of state-sponsored sports gambling." *Christie I*, 730 F.3d at 216. In this action, plaintiffs again allege that defendants are violating federal law. This Court has already issued a permanent injunction against some of the defendants prohibiting

their violation of PASPA. Constitutional and statutory violations often cannot be adequately remedied through damages and therefore generally constitute irreparable harm.

Moreover, plaintiffs have been faced with an actual threat - the NJTHA will accept sports wagering at Monmouth [14] Park beginning this Sunday under the authority of the 2014 Law. Plaintiffs assert that irreparable harm will result to their reputation because sports betting on their own games will result in a negative effect on the perception of their games and the relationships with their fans. This assertion of reputational harm is a very real harm that would be a direct result of sports wagering on plaintiffs' games caused by defendants. The Third Circuit, and this Court, have already found, in the context of standing, "a link between legalizing sports gambling and harm to the integrity of [plaintiffs'] games," and a resulting increase in a negative perception or reputation associated with plaintiffs. *Christie I*, 730 F.3d at 221. The Court recognizes the differences in the standards used to constitute "injury" in the standing context and a TRO analysis. Yet, the record of *Christie I*, including the Third Circuit and this Court's opinions, is "replete with evidence" showing that plaintiffs' association with gambling is stigmatizing. *See Id.*

Additionally, the Third Circuit found "a clear link between the [2012] Sports Wagering Law and increased incentives for game-rigging." Id. This same link exists for the 2014 Law, as well. "Thus, more legal gambling leads to more total gambling, which in turn leads to an increased incentive to fix or attempt to fix [plaintiffs'] matches." *Id.* This spread of sports betting "would engender the very [15] ills that PASPA sought

to combat." Office of the Commissioner of *Baseball v. Markell*, 579 F.3d 293, 304 (3d Cir. 2009).

Furthermore, the Court agrees with plaintiffs that the bounds of the 2014 Law belies any argument that plaintiffs are not injured by gambling on their games, as the new law itself carves out a prohibition on sports wagering on collegiate athletic contests occurring in the state or involving New Jersey colleges.

Accordingly, the Court finds that plaintiffs have shown irreparable harm, and this factor weighs heavily in favor of granting the temporary restraining order.

C. Balance of Equities

The Court must also balance the irreparable harm to be suffered by plaintiffs against any potential harm to be suffered by defendants. Defendants set forth a plethora of harmful results that will occur if the Court grants plaintiffs' request for a temporary restraining order.

While defendants may suffer some harm as a result of a temporary restraining order, much of this harm is self-inflicted. Based on this Court's and the Third Circuit's opinions, and the novel approach of the state in drafting the 2014 Law, defendants could, and should have, anticipated potential hurdles towards implementing sports betting at casinos and racetracks. The NJTHA claims that it has expended great sums of money in preparation for sports betting to [16] commence on October 26th. However, the NJTHA could have easily awaited this Court's decision on the validity of the 2014 Law prior to taking such steps.

In sum, the Court is not convinced defendants will suffer the grave injury that they have alleged in their opposition papers should the status quo be preserved

and New Jersey residents are temporarily prevented from engaging in sports betting at Monmouth Park this Sunday.

D. Public Interest

Last, the Court must consider whether the issuance of a temporary restraining order serves the public interest. In cases involving matters of special concern to the public, such as this matter, the public interest weighs heavy in determining the appropriateness of injunctive relief. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008); *Yakus v. United States*, 321 U.S. 414, 441 (1944).

In *Christie I*, the Third Circuit stated that "this case is made difficulty by [Appellants'] strong arguments in support of New Jersey's law as a policy matter." *Christie I*, 730 F.3d at 215 (quotations omitted). This Court acknowledges the same. Nevertheless, the Third Circuit also stated "our duty is to say what the law is." *Id.* (quotations omitted). Indeed, as far as public interest is concerned, the public is served when courts can provide certainty in the law. Citizens deserve to know whether the act they are about to commit is [17] illegal or in violation of federal policy. When states act in contravention of federal policy, the legitimacy of federal laws is necessarily thrown into question.

More fundamentally, the public interest is served by preserving the "status quo. . . until the merits of a serious controversy can be fully considered by" the court. *Blackwelder Furniture Co. v. Seilig Mfg. Co.*, 550 F.2d 189, 197 (4th Cir. 1977), overruled on other grounds by *Real Truth About Obama, Inc. v. Fed. Election Comm'n*, 575 F.3d 342, 346-47 (4th Cir. 2009). Here, the Court has been given limited time to resolve

a question of the utmost public interest both for the citizens of New Jersey and other states who may seek to permit sports betting within their borders.

Accordingly, the public interest factor weighs in favor of issuing a temporary restraining order.

E. Conclusion

In sum, this Court must weigh all four factors in their totality in deciding if a temporary restraining order must issue. This Court and the Third Circuit have already determined PASPA to be constitutional. Plaintiffs now seek to prevent the potential violation of that law. The Court finds that the preservation of the status quo is necessary and of paramount importance. Therefore, plaintiffs' application for a temporary restraining order is granted.

4. Bond

[18] In their moving brief, plaintiffs assert that there is no cognizable harm to defendants from the issuance of a temporary restraining order. Therefore, they request the Court to exercise its discretion and dispense with the bond requirement. (Pls.' Moving Br. 27, ECF No. 27.) NJTHA argues that plaintiffs ignore the plain language of Federal Rule of Civil Procedure 65 and that a court may only dispense with the bond requirement under narrowly drawn circumstances. In their reply brief, plaintiffs did not respond to NJTHA's bond-related arguments.

Federal Rule of Civil Procedure 65(c) provides that "[t]he court may issue a preliminary injunction or temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained."

The law in this Circuit is clear - when a risk of financial harm exists for the party to be enjoined, the posting of a security bond is required. *Zambelli Fireworks Mfg. Co. v. Wood*, 592 F.3d 412, 426 (3d Cir. 2010). "Although the amount of the bond is left to the discretion of the court, the posting requirement is much less discretionary," and the requirement is almost mandatory. *Frank's GMC Truck Center, Inc. v. General Motors Corp.*, 847 F.2d 100, 103 (3d Cir. 1988). An extremely narrow exception exists only "when complying [19] with the preliminary injunction raises no risk of monetary loss to the defendant." *Zambelli Fireworks Mfg. Co.*, 592 F.3d at 426.

Plaintiffs have not established, nor even argued, why this temporary restraining order raises no risk of monetary loss to the NJTHA. Here, the Court finds a bond appropriate. The amount of the bond is within the discretion of the court. *Hoxworth v. Blinder, Robinson & Co.*, 903 F.2d 186, 210 (3d Cir. 1990). In keeping with the policies of reimbursement and protection which underlie the bond requirement, Rule 65(c) also provides that the bond is for the payment of costs and damages as may be incurred or suffered by a party wrongfully restrained. Federal Rule of Civil Procedure 65(c). In exercising its discretion, this Court finds it appropriate to set the bond on the high side to avoid any potential loss to defendants. Therefore, plaintiffs must post a bond in the amount of $1,700,000.

If defendants assert they pose a risk of harm greater than the value of the bond currently set, they may make an application to this Court to increase the bond amount.

The Court will enter both an Order consistent with this bench opinion and a Scheduling Order for

the pending preliminary injunction by close of business day. That's all we have for this matter today. I thank counsel for appearing telephonically on such short notice and we will try and get [20] this Order posted on short notice.

MR. RICCIO: Your Honor may, I ask a question. This is Ron Riccio.

THE COURT: Sure. Hello. You had a question?

MR. RICCIO: Judge Shipp?

THE COURT: Can you hear me?

MR. RICCIO: Yes, I can hear you now. I was unclear whether the scope of your injunction is limited to the plaintiffs' games and not other sporting contests that the plaintiffs have no interest in.

THE COURT: Well, right now the only -- the scope is limited to the application that's been put before the Court which is limited to the plaintiffs' games.

MR. RICCIO: That was the clarification I was seeking. Thank you, your Honor.

THE COURT: That's all we have for today counsel.

THE DEPUTY COURT CLERK: All rise.

(Court concludes at 5:08 p.m.)

ADDENDUM:

Upon further consideration of the question posed by counsel for the NJTHA as to the scope of the temporary restraining order, this court finds that the temporary restraining order restrains the implementing, enforcing, or taking any action pursuant to New Jersey Senate Bill 2460 (P.L. 2015, c. 62), the 2014 Law, and would apply to any lottery, sweepstakes, or [21]

other betting, gambling, or wagering scheme based, directly or indirectly, on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games. The scope of restraints is NOT limited to the games sponsored by the plaintiffs' leagues.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, et al., Plaintiffs, v. CHRISTOPHER J. CHRISTIE, et al., Defendants.	Civil Action No. 3:14-cv-6450 (MAS)(LHG)
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, et al., Plaintiffs, v. CHRISTOPHER J. CHRISTIE, et al., Defendants, STEPHEN M. SWEENEY, et al., Defendants- Intervenors.	Civil Action No. 3:12-cv-4947 (MAS)(LHG) **ORDER**

THIS MATTER having been brought before the Court by McCarter & English, LLP, Skadden, Arps,

Slate, Meagher & Flom LLP, and Bancroft PLLC, attorneys for Plaintiffs National Collegiate Athletic Association, National Basketball Association, National Football League, National Hockey League, and Office of the Commissioner of Baseball doing business as Major League Baseball (collectively, "Plaintiffs"), seeking a Temporary Restraining Order, and the Court having considered the papers submitted in support of and in opposition to the Application; and the Court having determined that Plaintiffs are entitled to the requested temporary relief; and for other good cause shown.

IT IS this _____ day of October, 2014,

ORDERED that Plaintiffs application for temporary restraints in Case No. 14-6450 is **GRANTED**.

IT IS FURTHER ORDERED THAT Defendants are restrained from sponsoring, operating, advertising, promoting, licensing, or authorizing a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly (through the use of geographical references or otherwise), on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games.

IT IS FURTHER ORDERED THAT Defendants are restrained from implementing, enforcing, or taking any action pursuant to New Jersey Senate Bill 2460 (P.L. 2015, c. 62).

IT IS FURTHER ORDERED THAT Defendants New Jersey Thoroughbred Horsemen's Association and New Jersey Sports Exposition Authority are restrained from advertising, promoting, or operating sports wagering pursuant to New Jersey Senate Bill 2460 (P.L. 2015, c. 62), or otherwise, and from sponsoring, operating, advertising, promoting, licensing, or authorizing any lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly, on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games.

IT IS FURTHER ORDERED THAT Defendants New Jersey Thoroughbred Horsemen's Association and New Jersey Sports Exposition Authority are restrained from conducting sports wagering at Monmouth Park.

IT IS FURTHER ORDERED THAT the above restraints shall remain in effect until this Court resolves Plaintiffs' application for a preliminary injunction.

IT IS FURTHER ORDERED THAT Plaintiff's Motion for Order to Show Cause with Temporary Restraints in regards to Case No. 12-4947 is hereby terminated, as Plaintiff has not requested any relief in their application with respect to that case.

October 24, 2014

HON. MICHAEL A. SHIPP
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, et al., Plaintiffs, v. CHRISTOPHER J. CHRISTIE, et al., Defendants.	Civil Action No. 3:14-cv-6450 (MAS)(LHG)
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, et al., Plaintiffs, v. CHRISTOPHER J. CHRISTIE, et al., Defendants, STEPHEN M. SWEENEY, et al., Defendants- Intervenors.	Civil Action No. 3:12-cv-4947 (MAS)(LHG) **SCHEDULING ORDER**

IT IS this 27th day of October, 2014,

ORDERED that

(1) Defendants may file additional briefing in opposition to Plaintiffs' pending application for a preliminary injunction by **Monday, November 3, 2014**;

(2) Plaintiffs may file a reply brief by **Friday, November 7, 2014**; and

(3) The Court will hear oral argument on **Thursday, November 20, 2014 at 10:00 a.m.**

IT IS FURTHER ORDERED that the 14-day limitation period on the temporary restraining order is extended, for good cause and by the consent of all parties, for an additional 14 days pursuant to Federal Rule of Civil Procedure 65(b)(2) until November 21, 2014.

IT IS FURTHER ORDERED that the NJTHA's request for an increase in security due to the fourteen day extension is granted, and Plaintiffs must post an additional $1,700,000 bond, making the total bond $3,400,000, by **Monday, November 10, 2014**.

HON. MICHAEL A. SHIPP
UNITED STATES DISTRICT JUDGE

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, *et al.*, Plaintiffs, v. CHRISTOPHER J. CHRISTIE, *et al.*, Defendants.	Civil Action No. 3:14-cv-06450 (MAS) Honorable Michael A. Shipp, U.S.D.J. **DECLARATION OF DAVID L. REBUCK IN SUPPORT OF THE STATE DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

I, David L. Rebuck, hereby declare:

1. I am the Director of the Division of Gaming Enforcement ("DGE" or "Division") within the New Jersey Department of Law and Public Safety. I was nominated to the position in 2011 and was confirmed in 2012. DGE enforces the Casino Control Act, N.J. Stat. Ann. § 5:12-1 *et seq.*, and the regulations promulgated thereunder. The Division's oversight of the casino gaming industry includes investigations, inspections, audits, and criminal and regulatory prosecutions, as well as daily monitoring of certain casino operations.

2. As the Director, I am responsible for overseeing all aspects of DOE's enforcement of the Casino Control Act and its accompanying regulations. The Division has primary rulemaking authority over all aspects of casino gambling, save for the issuance of casino licenses. While DOE plays a role in investigating prospective licensees, the Casino Control Commission, an independent agency affiliated with the New Jersey Department of the Treasury, rather than DOE, is empowered to issue casino licenses.

3. Regulation of New Jersey's eight casinos generally occurs under the auspices of the Casino Control Act and the associated regulations set forth in N.J. Admin. Code § 13:69N *et seq.* With respect to the forms of gaming covered by the Casino Control Act, the regulations thereunder govern, among other things:

- Accounting and internal controls, including audits, N.J. Admin. Code § 13:69D *et seq.*;
- Rules of the games, *id.* § 13:69F *et seq.*;
- Inspections of gaming equipment, *id.* § 13:69E *et seq.*;
- Maintaining registries of casino employees and vendors, *id.* §§ 13:69C *et seq.*, 691 *et seq.*;
- Self-exclusion list violations, *id.* § 13:69g *et seq.*; and
- Security and closed-circuit television (CCTV) surveillance, *id.* § 13:69d-1.10.

DOE's Regulatory Responsibilities Under The Repealed 2012 Sports Wagering Law

4. The 2012 Sports Wagering Law ("2012 Law"), which has since been repealed, would have created a detailed regulatory regime for sports wagering akin to the one currently governing other forms of casino gaming, such as poker, blackjack, or the simulcasting of horse racing. The 2012 Law provided that DOE would have had an active role and general responsibility in promulgating, and subsequently administering, regulations specifically applicable to sports wagering at casinos and racetracks. Indeed, shortly after the 2012 Law's enactment, DGE developed and issued

a full set of regulations governing sports wagering. These regulations, set forth at N.J. Admin. Code § 13:69N, subsequently were enjoined by the federal courts and then were repealed by P.L. 2015, c. 62 ("2014 Act").

5. The 2012 Law contained specific provisions governing the actual operation of sports pools. For example, under the 2012 Law and the DGE regulations promulgated thereunder, sports pools would have been restricted to designated "sports lounges" and would have been subject to a number of detailed requirements, including using tested and approved equipment, utilizing the same kind of surveillance and security measures employed in other gaming areas within the casino, and displaying the wagering odds according to prescribed standards. N.J. Stat. Ann. § 5:12A-2(b), (c). Additionally, DGE would have regulated a number of other subject areas, including, among others:

- A sports pool's amount of cash reserves, N.J. Stat. Ann. § 5:12A-4(a); N.J. Admin. Code § 13:69N-2.5;

- Acceptance of wagers on a series of sports events, N.J. Stat. Ann. § 5:12A-4(b);

- Maximum wagers from any one patron on any one event, *id.* § 5:12A-4(c);

- Types of permissible wagering tickets and methods by which they may be issued, *id.* § 5:12A-4(d), (e); N.J. Admin. Code § 13:69N-2.3(b);

- Methods of accounting to be used by operators, N.J. Stat. Ann. § 5:12A-4(f); N.J. Admin. Code § 13:69N-1.11;

- Types of records to be kept, N.J. Stat. Ann. § 5:12A-4(g);

- Patrons' payment methods, *id.* § 5:12A-4(h);

- Types of systems used for wagering, *id.* § 5:12A-4(i); N .J. Admin. Code § 13:69N-1.12;

- Protections for persons placing wagers, *id.* § 5:12A-4(j); N.J. Admin. Code § 13:69N-1.9;

- Display of the 1-800-GAMBLER hotline, N.J. Stat. Ann. § 5:12A-4(k);

- Maintenance of exclusion lists, *id.* § 5:12A-2(e);

- Licensing of casino employees working in sports wagering lounges, *id.* § 5:12A-3(a); and

- Adoption of comprehensive house rules governing sports wagering transactions, covering things such as the amount to be

paid on winning wagers and the effect of schedule changes, *id.* § 5:12A-5.

DGE's Lack Of Any Regulatory Role After The 2014 Act

6. Now that the 2012 Law and any rules and regulations in the Casino Control Act or other parts of the criminal and civil codes that could be construed to "authorize" sports wagering have been repealed by the 2014 Act, neither I nor anyone else at DGE will regulate sports wagering offered by casinos or racetracks. To the extent that sports wagering occurs, it will do so without state regulation by DGE.

7. The 2014 Act is entirely self-executing. No action is required on my part to implement or enforce the 2014 Act for the simple reason that the 2014 Act prohibits DGE from applying any of the Casino Control Act provisions or accompanying regulations to sports wagering. For example, although DGE typically would require an on-premises vendor such as William Hill plc, a sports betting bookmaker, to undergo a background check, submit financial information, and apply for a license, under the 2014 Act, DGE is not permitted to investigate William Hill's credentials or financial statements in relation to that entity's operation of a sports wagering pool, nor would DGE issue any kind of report to the Casino Control Commission as part of any license application. In other words, DGE will have no

role or say in any decision by a casino or racetrack to either internally operate a sports pool or hire a private company like William Hill to operate the casino's or racetrack's sports pool. That is a marked departure from DGE's usual mode of regulating casino vendors, but it is what I understand the 2014 Act requires.

8. Similarly, DGE would not enforce or maintain a voluntary self-exclusion list of persons who are to be prohibited from participating in a sports wagering pool. In other words, gamblers otherwise appearing on the voluntary self-exclusion list (meaning that they may enter a casino, but not participate in any gaming), would not be prohibited by DGE from participating in a sports wagering pool, even though DGE would prohibit them from participating in all other forms of gaming.

9. Surveillance provides yet another example of how sports wagering is treated differently from other forms of wagering. The Casino Control Act calls for very specific surveillance and security measures for gaming areas within a casino, but those surveillance and security measures would not apply to sports lounges or other areas where sports wagering might occur; from DGE's perspective, those areas instead would be treated as if they were part of a restaurant, the hotel lobby, the parking garage, or any other non-gaming area of the casino.

10. Sports wagering operators and patrons will, of course, like any other individual or entity, remain subject to all federal and state criminal laws as well as state regulations, such as the consumer fraud protection rules, that are generally applicable to all businesses, not just casinos and racetracks. Thus, if it became known that a patron of a sports wagering pool, the entity operating the pool, or an employee of the pool were engaged in any kind of criminal activity, such as fraud or theft, whether or not connected to sports wagering, that person or entity could face investigation or prosecution. However, any such investigation or prosecution would be run exclusively by state or local law enforcement authorities, such as the Atlantic City Police Department. DGE would not have any involvement in those proceedings and there would be no sports wagering-specific regulations to inform such an enforcement action.

11. It is my understanding that pursuant to the 2014 Act, no provision of the Casino Control Act or any of its accompanying regulations applies to sports wagering.

12. In sum, after the 2014 Act, none of the subject areas described in paragraphs 3 and 5 that would have been subject to regulation under the 2012 Law, or would have been incidentally regulated by other provisions of the Casino Control Act, to the extent they relate to sports wagering, will fall within the pur-

view of DGE. DGE will not monitor nor concern itself with whether or not a casino elects to operate a sports pool or the way a casino goes about operating such sports pool. For all intents and purposes, DGE now considers sports wagering to be "non-gambling activity" akin to fantasy sports betting or "social gaming" offered by some casinos that is beyond DGE's control and outside of DGE's regulatory authority.

The facts in this document are known to me and I would be able to testify about them. I hereby declare under penalty of perjury under the laws of the State of New Jersey and the laws of the United States that the foregoing information is true and correct, and that I signed this declaration in _____, _____ on the _____ of November, 2014.

_____

David L. Rebuck
Director, Division of Gaming Enforcement

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, *et al.*, Plaintiffs, v. CHRISTOPHER J. CHRISTIE, *et al.*, Defendants.	Civil Action No. 3:14-cv-06450 (MAS) Honorable Michael A. Shipp, U.S.D.J. **DECLARATION OF FRANK ZANZUCCKI IN SUPPORT OF THE STATE DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

I, Frank Zanzuccki, hereby declare:

1. I am the Executive Director of the New Jersey Racing Commission ("NJRC" or "Commission"). I have worked for the Commission since 1978 and was appointed Executive Director in 1991. NJRC is responsible for regulating the horse racing industry, which it accomplishes through regular monitoring, investigations, and, if necessary, prosecutions. NJRC has jurisdiction over New Jersey's thoroughbred and standardbred permit-holders and holds the authority to regulate horse racing at the four racetracks in this State.

2. As the Executive Director of the Commission, I am responsible for administering all Commission activities. In addition, I have certain specific responsibilities, including the authority to supervise all race officials, licensees, and employees, as well as the conduct of racing, pari-mutuel operations, and the testing of horses.

Overview of Racetrack Regulation in New Jersey

3. The Commission is a division of the New Jersey Department of Law and Public Safety. Among other activities, NJRC oversees pari-mutuel wagering, supervises pari-mutuel operations at all operating New Jersey racetracks, and grants permits for running the thoroughbred and standardbred race meetings in the State.

4. Pari-mutuel wagering is a common form of betting on horse racing, and involves pooling a group of bets and calculating the odds based on the assumption that the pool will be shared by all winning bets. Pari-mutuel wagering is permitted at the four racetracks currently operating in New Jersey. The Commission also has jurisdiction over the simulcasting of horse racing activities at New Jersey's racetracks, as well as casino simulcasting facilities and the State's five currently-operating off-track wagering facilities.

5. The horse racing industry in New Jersey is governed by the statutory provisions set forth in N.J. Stat. Ann. § 5:5-22 *et seq.*, as well as the administrative rules and regulations promulgated by NJRC and set forth in the New Jersey Administrative Code at Title 13, Chapters 70, 71, 72, 73, 74, 74A and 74B. A number of these statutory provisions relate to the pari-mutuel wagering that may occur at racetracks. These include:

   - The need to have a license to offer pari-mutuel wagering, N.J. Stat. Ann. § 5:5-62;

   - Regulations regarding the size of the wagering pools, *id.* § 5:5-62.1;

   - Regulations regarding the display of the odds, the placement of the horses, and the elapsed time of the race, *id.* § 5:5-63;

- Regulations regarding the types of tickets and ticket machines, *id.*;

- Distribution of payments to winners or in the case of ties, *id.*;

- Percentage of payments racetracks are allowed to keep, and purposes for which those payments may be used (e.g., increasing the size of the purse the track can offer), *id.* § 5:5-64.

6. The Commission administers and enforces these statutory provisions and regulations through investigations, penalties, fines, exclusions, and revocation of licenses, among other methods.

NJRC's Role Under The 2012 Sports Wagering Law

7. NJRC had a fairly limited role in regulating sports wagering under the 2012 Sports Wagering Law ("2012 Law"). NJRC's main responsibilities under the 2012 Law were to give "approval," in conjunction with the Division of Gaming Enforcement ("DGE"), to any vendor or operator seeking to offer sports wagering at a racetrack. N.J. Stat. Ann. § 5:12A-2. Typically, the approval process for a vendor would involve a criminal background check and an investigation of the vendor's financials. NJRC's approval process was to be distinct from the sports wagering license itself, which could only be issued by DGE.

NJRC's Role After The 2014 Act

8. In contrast to NJRC's limited role under the 2012 Law, NJRC has no role at all in sports wagering following the 2014 Sports Wagering Act ("2014 Act"). Because the 2014 Act is self-executing, neither I nor anyone else at NJRC will play any part in implementing, enforcing or otherwise effectuating the 2014 Act. To the contrary, we will have no involvement at all in any of the sports wagering operations that may occur at any of the four racetracks in New Jersey. Thus, whereas under the 2012 Law, the Commission might have enforced regulations generally applicable to racetrack vendors—such as the vendor licensing requirements—against sports wagering operators, the Commission will no longer do so following the 2014 Act.

9. Of course, federal and state criminal and civil laws applicable to businesses generally (including but not limited to racetracks and casinos) will continue to apply to all conduct at New Jersey's racetracks, whether or not related to sports wagering. But NJRC will have no direct role in enforcing those laws or prosecuting any violations of those laws.

10. In sum, NJRC will be completely "hands-off" with respect to any sports wagering that may or may not occur at one of the four racetracks subject to its regulatory authority. Following the 2014 Act, sports wagering will be subject to none of the laws or regulations governing,

for example, pari-mutuel wagering or simulcasting, and vendors seeking to offer sports wagering will be exempt from the requirements that apply to other vendors, including those selling food or beverages.

The facts in this document are known to me and I would be able to testify about them. I hereby declare under penalty of perjury under the laws of the State of New Jersey and the laws of the United States that the foregoing information is true and correct, and that I signed this declaration in _____, _____ on the _____ of November, 2014.

Frank Zanzuccki
Executive Director, New Jersey Racing Commission

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, *et al.*, Plaintiffs, v. CHRISTOPHER J. CHRISTIE, *et al.*, Defendants.	Civil Action No. 3:14-cv-06450 (MAS) Honorable Michael A. Shipp, U.S.D.J. **DECLARATION OF MATTHEW B. LEVINSON IN SUPPORT OF THE STATE DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

I, Matthew B. Levinson, hereby declare:

1. I am the Chairman and Chief Executive Officer of the Casino Control Commission ("Commission" or "CCC") and have held this position since August 2012. The Commission is authorized to interpret and implement the Casino Control Act, N.J. Stat. Ann. § 5:12-1 *et seq.*; it is an independent agency in but not of the New Jersey Department of the Treasury.

2. The Commission is comprised of three members appointed by the Governor. It is charged with licensing New Jersey casinos as well as casino key employees. N.J. Stat. Ann. § 5:12-63. The "key employee" designation applies to those individuals employed in a supervisory capacity in the operation of a casino who are authorized to make various types of discretionary decisions. N.J. Stat. Ann. § 5: 12-9. The Commission also issues findings as to whether certain corporate officers and directors, e.g., CEOs and CFOs of casino holding companies, qualify under the key employee license standards. N.J. Stat. Ann. § 5:12-85.1, -89. The licensing and registration of other casino employees, service industries and vendors falls within the jurisdiction of the Division of Gaming Enforcement ("DGE") within the New Jersey Department of Law and Public Safety.

3. The Commission works closely with DGE in order to fulfill its licensing duties. DGE con-

ducts the background investigation of applicants for casino licenses and casino key employee licenses, and issues recommendations to the Commission regarding whether the applicant meets statutory licensing criteria. N.J. Stat. Ann. §§ 5: 12-80-89, -94. A final determination is issued by the Commission at a public hearing.

4. In addition to its licensing role, the Commission also has a quasi-judicial function, in which it hears appeals of decisions or penalties imposed by DGE. N.J. Stat. Ann. § 5: 12-63(1)(b); N.J. Admin. Code § 19:42A.

5. The Commission conducts periodic, comprehensive reviews of casinos' organizational structures to ensure that casino key employees are correctly identified and appropriately licensed, but has no regulatory oversight over gaming operations. It is authorized to promulgate regulations regarding matters within its jurisdiction. N.J. Stat. Ann. § 5:12-69a.

6. DGE was vested with the general responsibility for administering the 2012 Sports Wagering Law ("2012 Law"). Only a casino licensed by the Commission or a racetrack licensed by the New Jersey Racing Commission would have been eligible for a sports pool license. N.J. Admin. Code § 12:69N-1.2(a) (Repealed). The Commission would otherwise have been involved in the regulation of sports wagering only to the extent it was authorized to issue casino key employee licenses to individuals

deemed, upon review by the Commission, to be "directly involved in sports pool wagering." N.J. Admin. Code § 13:69N-1.8 (Repealed).

7. After the 2014 Sports Wagering Act ("2014 Act"), however, the CCC will not be involved in any review or licensing of sports pool wagering employees. Individuals will not be designated as key employees based upon their direct or indirect involvement in sports wagering pools, and their credentials will not be reviewed or otherwise examined by the Commission for this purpose.

8. Subsequent to the 2014 Act, no statutory or regulatory provision requires licensure or oversight by the Commission of operators or employees of sports pools. The 2014 Act leaves the Commission with no mandate or regulatory authority with respect to sports wagering.

The facts in this document are known to me and I would be able to testify about them. I hereby declare under penalty of perjury under the laws of the State of New Jersey and the laws of the United States that the foregoing information is true and correct, and that I signed this declaration in _____, _____ on the ____ of November, 2014.

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6. DGE was vested with the general responsibility for administering the 2012 Sports Wagering Law ("2012 Law"). Only a casino licensed by the Commission or a racetrack licensed by the New Jersey Racing Commission would have been eligible for a sports pool license. N.J. Admin. Code § 12:69N-1.2(a) (Repealed). The Commission would otherwise have been involved in the regulation of sports wagering only to the extent it was authorized to issue casino key employee licenses to individuals

deemed, upon review by the Commission, to be "directly involved in sports pool wagering." N.J. Admin. Code § 13:69N-1.8 (Repealed).

7. After the 2014 Sports Wagering Act ("2014 Act"), however, the CCC will not be involved in any review or licensing of sports pool wagering employees. Individuals will not be designated as key employees based upon their direct or indirect involvement in sports wagering pools, and their credentials will not be reviewed or otherwise examined by the Commission for this purpose.

8. Subsequent to the 2014 Act, no statutory or regulatory provision requires licensure or oversight by the Commission of operators or employees of sports pools. The 2014 Act leaves the Commission with no mandate or regulatory authority with respect to sports wagering.

The facts in this document are known to me and I would be able to testify about them. I hereby declare under penalty of perjury under the laws of the State of New Jersey and the laws of the United States that the foregoing information is true and correct, and that I signed this declaration in _____, _____ on the _____ of November, 2014.

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corporated association doing business as Major League Baseball,	:
Plaintiffs	:
v.	:
CHRISTOPHER J. CHRISTIE, Governor of the State of New Jersey, DAVID L. REBUCK, Director of the New Jersey Division of Gaming Enforcement and Assistant Attorney General of the State of New Jersey, and FRANK ZANZUCCKI, Executive Director of the New Jersey Racing Commission, NEW JERSEY THOROUGHBRED HORSEMEN'S ASSOCIATION, INC., and NEW JERSEY SPORTS AND EXPOSITION AUTHORITY,	:
Defendants,	:
And	:

STEPHEN M. SWEENEY, President of the New Jersey Senate, and VINCENT PRIETO, Speaker of the New Jersey General Assembly,	:	
Defendant-Intervenors.	:	
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, an unincorporated association, NATIONAL BASKETBALL ASSOCIATION, a joint venture, NATIONAL FOOTBALL LEAGUE, an unincorporated association, NATIONAL HOCKEY LEAGUE, an unincorporated association, and OFFICE OF THE COMMISSIONER OF BASEBALL, an unincorporated association doing business as Major League Baseball,	:	Civil Action No. 3:12-cv-4947 (MAS) (LHG) Hon. Michael A. Shipp, U.S.D.J.
Plaintiffs,	:	
v.		
CHRISTOPHER J. CHRISTIE, Governor of	:	

the State of New Jersey, DAVID L. REBUCK, Director of the New Jersey Division of Gaming Enforcement and Assistant Attorney General of the State of New Jersey, and FRANK ZANZUCCKI, Executive Director of the New Jersey Racing Commission,	:
Defendants,	:
And	:
STEPHEN M. SWEENEY, President of the New Jersey Senate, SHEILA Y. OLIVER, Speaker of the New Jersey General Assembly, and NEW JERSEY THOROUGHBRED HORSEMEN'S ASSOCIATION, INC.,	:
Defendant-Intervenors.	:

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Preliminary Statement

This application for a preliminary injunction is necessitated by defendants' unrelenting efforts, begun more than three years ago, to devise a way to authorize Atlantic City casinos and New Jersey horse racetracks to conduct sports wagering operations and to sponsor and promote that sports wagering in the hope of attracting business to that part of New Jersey's economy. When legislation expressly authorizing casinos and racetracks to operate sports betting pools was struck down as a violation of the Professional and Amateur Sports Protection Act, 28 U.S.C. § 3701, *et seq.* ("PASPA"), the State cobbled together several attempts to circumvent PASPA and to achieve the same result—enabling sports gambling at these state-licensed gambling venues.

The challenged Senate Bill 2460 (the "2014 Sports Wagering Law") is the most recent effort by the State to disregard federal law—and this Court's prior injunction—and, in the words of New Jersey Assemblyman Ralph Caputo, one of the law's sponsors, to "implement well-regulated sports gaming and even the playing field with other states." (Dreyer Supp. Decl. Ex. 1.) As defendant Governor Christie acknowledged in his August 1, 2014 veto message with respect to Senate Bill 2250, the 2014 Sports Wagering Law's predecessor—which, like the 2014 Sports Wagering Law, purported to "repeal" all of New Jersey's prohibitions on sports wagering, but only at state-licensed casinos and racetracks:

> In a novel attempt to circumvent the Third Circuit's ruling, this bill states that all prohibitions against wagering on the results of any professional, college, or amateur sport or athletic event, set forth in State law would no longer apply to wagering at casinos or racetracks in this State. In essence, this bill partially deregulates betting at casinos and racetracks in an effort to sidestep federal law. While I support the intentions of the Legislature to continue our shared commitment to enhancing the economic vitality of our gaming industry, I cannot sign this bill, which was introduced on the same day the Supreme Court declined to hear our appeal, and then was rushed to final passage just three days later. Ignoring federal law, rather than working to reform federal standards, is counter to our democratic traditions and inconsistent with the Constitutional values I have sworn to defend and protect.

(Dreyer Supp. Decl. Ex. 2.)

Defendants' repeated argument that the 2014 Sports Wagering Law "partially repeals" the prohibitions on sports gambling is nonsense. True enough, the new law repeals the already invalidated 2012 Sports Wagering Law, N.J. Stat. Ann. § 5:12A-1, *et seq.* (West 2012), and the regulations promulgated thereunder. But the new law manifestly does not repeal any of the State's criminal or civil statutes prohibiting gambling generally or sports gambling in particular. All of New Jersey's criminal and civil gambling prohibitions and gaming regulations, including

the detailed Casino Control Act, remain in full force. The 2014 Sports Wagering Law simply carves out a limited exception from those laws for New Jersey's casinos and racetracks. By leaving in place all prohibitions on sports wagering in the State and enacting a limited exception for highly regulated, state-licensed gambling venues, the 2014 Sports Wagering Law plainly confers the State's imprimatur on sports wagering in those gaming locations, authorizing that sports wagering under the auspices of a state-issued license in violation of PASPA. This latest circumvention of federal law should not be countenanced, and plaintiffs' motion for a preliminary injunction should be granted.

Argument

Defendants have not overcome plaintiffs' showing that a preliminary injunction is warranted in this case to maintain the *status quo* pending this Court's ultimate determination that the 2014 Sports Wagering Law should be struck down as yet another violation of PASPA. Plaintiffs have shown a likelihood of success on the merits of their claim because New Jersey has not repealed its prohibitions on sports wagering; it has merely enacted a limited exception authorizing sports wagering at casinos in Atlantic City and at racetracks throughout the State. Moreover, the evidence adduced to date shows that, defendants' denials notwithstanding, defendant the New Jersey Sports and Exposition Authority (the "NJSEA") has expressly authorized defendant the New Jersey Thoroughbred Horsemen's Association (the "NJTHA") to engage in sports gambling at Monmouth Park and

has, in writing, explicitly sponsored that activity. Finally, defendants have not overcome plaintiffs' demonstration that defendants' violation of PASPA would cause irreparable harm to plaintiffs, that the public interest favors the issuance of a preliminary injunction in this case, and that the balance of hardships tips decidedly in plaintiffs' favor on this motion.[1]

I. New Jersey Has Not Repealed Its Prohibitions On Sports Wagering, But Has Merely Enacted A Limited Exception Authorizing Sports Betting At Casinos And Racetracks

The entire foundation for defendants' opposition to this motion—and to the merits of this case—is the assertion that the State has "partially repealed" its prohibitions on sports gambling. But the State has done no such thing. Every one of New Jersey's criminal and civil prohibitions on sports gambling remains in place and in effect today. Nothing has been repealed except the unlawful 2012 Sports Wagering Law and the regulations promulgated thereunder, which this Court and the Third Circuit already declared to be preempted by PASPA. In enacting the 2014 Sports Wagering Law, New Jersey has merely created an express, limited exception to the State's prohibitions which the State has confined to casinos

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[1] This brief responds to defendants' recent briefs in opposition to the motion for preliminary injunction. Plaintiffs do not repeat here, but incorporate by reference, all the arguments set forth in their briefs in support of their motion for a temporary restraining order and preliminary injunction, which were filed on October 21, 2014 (Dkt. 12-2) and October 23, 2014 (Dkt. 26).

and racetracks—venues where the State has already authorized and licensed gambling to be operated, sponsored, promoted and advertised. In other words, New Jersey has enacted a law that supplies state-licensed gambling venues—and those venues alone—with a special right to engage in activity that remains prohibited to all others.[2]

That makes the 2014 Sports Wagering law fundamentally different from the analogies defendants attempt to draw. No one perceives patrons engaged in "conversation" at a licensed barber shop as conversing under the auspices of a state law because New Jersey law does not prohibit "conversation" elsewhere. (State Def. Opp. Br. at 17.) The same cannot be said of sports gambling, however, because, but for the 2014 Sports

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[2] The Legislators' argument that the one former racetrack in New Jersey—the former Garden State Park racetrack in Cherry Hill—is no longer subject to any racetrack or casino regulations (Legislators Opp. Br. at 16-17) is deliberately misleading. In fact, to show that the inclusion of the former racetrack as a venue at which sports gambling is authorized by the 2014 Sports Wagering Law was not "a ruse," the Legislators acknowledge that the former Garden State Park racetrack was previously included in legislation authorizing the establishment of off-track betting establishments. (*Id.* at 17.) Coupled with the Legislators' express confirmation that the intent of the 2014 Sports Wagering Law was to permit sports wagering only in "certain locations where other gambling is already allowed," (*id.* at 10), it is obvious that the sponsors of the 2014 Sports Wagering Law contemplated that sports wagering would be conducted at the former Garden State Park only in conjunction with off-track betting, which is, of course, subject to its own detailed licensing and regulatory regime. *See* N.J. Stat. Ann. §§ 5:5-127 to 160 (Off-Track and Account Wagering Act) (West 2012).

Wagering Law, there is no question that sports gambling at casinos or racetracks (like at all other venues) would be prohibited. Accordingly, this is not a situation in which the "right" of those state-licensed gambling venues to add sports gambling to their offerings derives from the inherent "right to do that which is not prohibited" by law. *Nat'l Collegiate Athletic Ass'n v. Christie*, 730 F.3d 208, 232 (3d Cir. 2013), *cert. denied*, 134 S. Ct. 2866 (2014) ("*Christie I*"). It instead derives expressly and directly "from the authority of the state," *id.*, in the form of the special exemption that the 2014 Sports Wagering Law provides. New Jersey's attempted workaround thus does not change the obvious reality that the State has achieved precisely what PASPA prohibits: "sports gambling activity ... under the auspices of state approval and authorization." *Id.*

Defendants attempt to avoid that conclusion by claiming that, under the new law's exception for casinos and racetracks, all regulation of sports gambling in those state-licensed gambling venues has been eliminated. But that, too, is untrue. Even at casinos and racetracks, the 2014 Sports Wagering Law continues to prohibit sports wagering by persons under twenty-one years old, sports wagering on collegiate and other amateur athletic contests occurring within New Jersey, and sports betting on collegiate athletic events involving New Jersey colleges and universities, regardless of where they occur. And casinos and racetracks continue to be subject to extensive regulation to ensure that approved gaming is fairly and honestly conducted by persons whose financial and criminal backgrounds have been fully vetted by the appropriate authorities. For instance, the State defendants

readily acknowledge that they fully intend to ensure that any sports gambling offered in New Jersey complies with consumer protection laws. (*See* State Def. Opp. Br. at 4-5.) That is hardly the kind of "complete deregulation" of sports gambling that the Third Circuit has held PASPA leaves open to states. *Christie I*, 730 F.3d at 235.

Indeed, the legislative sponsors of the 2014 Sports Wagering Law have openly trumpeted the fact that the law ensures state control over the manner in which sports gambling will occur. As Assemblyman Caputo explained: "All New Jersey is trying to do is legally *implement well-regulated sports gaming* and even the playing field with other states. It's time for the courts to get out of the way and allow New Jersey to decide its own gaming laws." (Dreyer Supp. Decl. Ex. 1 (emphasis added).) Defendants emphasize in their opposition papers that this Court should look to the legislative intent when construing the challenged statute (*see, e.g.*, Legislators Opp. Br. at 10-14), and that legislative intent makes clear beyond dispute that the intention of the Legislators when enacting the 2014 Sports Wagering Law was to authorize and promote well-regulated sports gaming at casinos in Atlantic City and racetracks throughout the State.[3] Implicitly recognizing that the 2014 Sports Wagering

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[3] Because the 2014 Sports Wagering Law does in fact authorize sports gambling under the auspices of a state license, defendants' Eleventh Amendment and standing arguments necessarily fail, as those arguments are entirely derivative of defendants' flawed contention that the law "imposes no imprimatur" on sports gambling. (State Def. Opp. Br. at 23.)

Law cannot seriously be understood as a "complete deregulation" of sports gambling in New Jersey, defendants fight the premise that "PASPA gives states the choice of either implementing a ban on sports gambling or of accepting complete deregulation of that field." *Christie I*, 730 F.3d at 235. Invoking carefully selected snippets of the Third Circuit's opinion, they instead insist that PASPA leaves states with "much room" to determine "what the exact contours of the prohibition ... will be." (*See, e.g.*, State Def. Opp. Br. at 13.) Defendants completely distort what the Court actually said, which is that PASPA gives states two—and only two—options:

> Neither of PASPA's two "choices" affirmatively requires the states to enact a law, and both choices leave much room for the states to make their own policy. Thus, under PASPA, on the one hand, a state may repeal its sports wagering ban, a move that will result in the expenditure of no resources or effort by any official. On the other hand, a state may choose to keep a *complete ban* on sports gambling, but it is left up to each state to decide how much of a law enforcement priority it wants to make of sports gambling, or what the exact contours of the prohibition will be.

Christie I, 730 F.3d at 233 (emphasis added).

As is clear in context, when the Court referred to how "much room" states retain to determine "the exact contours of the prohibition," it was referring to

things like the kinds of penalties and consequences that accompany a "complete ban," not the persons or venues to which that ban applies.[4] Indeed, the Court never even hinted at the notion that a state may prohibit sports gambling in some but not all venues, or to some but not all people, while still managing to avoid having "authorized" or "licensed" it—let alone that a state might achieve that oxymoronic result by prohibiting sports gambling everywhere except in venues at which gambling already occurs under the auspices of a state license.

That makes defendants' attempt to resurrect their commandeering argument a nonstarter. PASPA avoids a commandeering problem by offering states the option of having "*no law* in place governing sports wagering," *id.* at 232, not the option of achieving "well-regulated sports gaming" through authorization styled as a "partial repeal." To be sure, as the Third Circuit recognized, the choice between a complete ban and a complete repeal might be a difficult one. "But the fact that Congress gave the states a hard or tempting choice does not mean that they were given no choice at all, or that the choices are otherwise unconstitutional." *Id.* (citations omitted). Nor does the fact that New Jersey apparently is unwilling to exercise either of the options Congress has given it empower the State to settle on some novel half-measure in an

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[4] So, too, was the United States when it observed in its brief in opposition to defendants' unsuccessful petitions for certiorari that, under PASPA, "New Jersey is free to repeal [its sports gambling] prohibitions in whole or in part." (DOJ Opp. to Cert. at 11.) That New Jersey may alter or repeal aspects of its scheme for enforcing its prohibition does not mean that New Jersey may "partially repeal" the prohibition itself.

open and acknowledged effort to use sports gambling to boost the revenues of state-licensed gambling venues (not to mention the State itself). As defendants repeatedly quote plaintiffs' counsel as saying, PASPA allows states to remain wholly "indifferent as to whether private individuals are gambling on sports," which is decidedly not what New Jersey has done here.

Finally, defendants urge this Court not to decide whether the state constitution requires all gambling conducted in New Jersey casinos and racetracks to be "authorized by law" and whether, if the 2014 Sports Wagering Law does not authorize sports wagering, then it violates the state constitution. But defendants do not dispute that this Court has jurisdiction to decide those constitutional law questions. And the Court would act well within its discretion in doing so here, where the meaning of the phrase "authorize by law" for purposes of construing PASPA is inextricably intertwined with the meaning of that phrase as used in the New Jersey Constitution.

In sum, regardless of what defendants call it, the 2014 Sports Wagering Law does not repeal any of New Jersey's prohibitions on sports wagering. It simply creates a partial exception to those prohibitions to authorize persons over the age of twenty-one to engage in sports wagering on sporting events other than those involving New Jersey colleges and universities or other amateur contests within the State, and only at heavily regulated, state-licensed gambling venues. The law grants the State's imprimatur to sports wagering in those gaming venues and provides that sports gambling with "a label of legitimacy that

would make the activity appealing." *Id.* at 237. This is precisely what PASPA prohibits. Accordingly, plaintiffs have shown a likelihood of success of the merits of their challenge to the 2014 Sports Wagering Law, and the issuance of a preliminary injunction maintaining the *status quo* should be granted.

Indeed, now that all the briefing regarding preliminary relief has been completed, it is clear that this Court's ultimate determination of the 2014 Sports Wagering Law's legality under PASPA turns on the Court's construction of the law on its face, and does not depend on any facts outside the complaint. Accordingly, this Court currently has all of the information it needs to render summary judgment in plaintiffs' favor. As the Third Circuit wrote when it reversed the denial of a preliminary injunction and, *sua sponte*, entered summary judgment against the State of Delaware for violating PASPA with its own sports gambling authorization: "When a party seeks injunctive relief, the stakes are high, time is of the essence, and a straightforward legal question is properly presented to us, prudence dictates that we answer that question with dispatch." *Office of the Comm'r of Baseball v. Markell*, 579 F.3d 293, 297 (3d Cir. 2009).

II. The NJSEA Has Expressly Authorized The NJTHA To Engage In Sports Gambling At Monmouth Park And Has Explicitly Sponsored That Activity

Regardless of the legality of the 2014 Sports Wagering Law under PASPA, there are no circumstances under which sports gambling may lawfully occur at Monmouth Park because the park is owned by

the State and operated pursuant to a compact with the NJSEA, a State agency. PASPA also makes it unlawful for: (i) a governmental entity such as the NJSEA to sponsor, operate, or "authorize by ... compact" sports gambling; and (ii) an entity such as the NJTHA—to "sponsor, operate, advertise, or promote" sports gambling "pursuant to ... compact of a governmental entity." 28 U.S.C. §§ 3702(1), (2). Although the NJSEA represented to the Court that it is merely a "hands-off" landlord whose lease with the NJTHA "[a]s to gaming . . . provides only that illegal activities are not permissible" (NJSEA Opp. to TRO, at 1), these claims are flatly contradicted by the lease itself. In fact, pursuant to the lease, a copy of which the NJSEA provided in opposition to this motion, (i) the NJSEA has already *expressly authorized* sports gambling at Monmouth Park; (ii) the parties to the lease have expressly agreed that NJTHA's activities at Monmouth Park are "deemed to be *sponsored*" by NJSEA; and (iii) the NJSEA is a market participant in sports wagering in that it would receive an increased rent based in part on sports betting revenue.

A. The NJSEA Has Authorized Sports Wagering At Monmouth Park

Sections 7.01 and 7.02 of the lease unequivocally provide that, for the duration of the lease term, to the extent permissible under state and federal law, the NJTHA "shall be entitled to use the Premises" for "sports betting" "[u]pon the enactment and effectiveness" of any New Jersey law that permits sports betting at the racetrack. (*See* Marra Decl. Ex. A (Dkt. 43-2), §§ 7.01, 7.02.) These provisions of Article VII are by themselves sufficient to establish a violation of

PASPA, since they authorize sports gambling at Monmouth Park by compact.[5]

The NJSEA's effort to avoid the plain language of the lease by arguing that its authorization of the NJTHA to conduct sports wagering under Article VII will not be "triggered" until the 2014 Sports Wagering Law is determined not to violate federal law (NJSEA Opp. Br. at 11) is unavailing. The NJSEA is a governmental entity that, under PASPA, may not authorize the NJTHA to conduct sports gambling at the state-owned Monmouth Park, period. That is so whether or not the 2014 Sports Wagering Law violates PASPA. Indeed, even if New Jersey were to completely deregulate sports gambling throughout the State, the NJSEA still could not authorize the NJTHA to operate sports wagering at the state-owned Monmouth Park (or at the state-owned Meadowlands racetrack, for that matter).

The NJSEA's further assertion that authorization under the lease requires additional action on the part of the NJSEA to be effective, and that the 2014 Sports Wagering Law deprives the NJSEA, as the property owner, of the ability to "allow or prohibit" sports wagering on the property and "void[s]" all provisions of the lease "that call for action by the Authority to allow sports wagering" on the property (*id.* at 10) is nonsense. Article VII of the lease makes it clear that the NJSEA has already authorized the NJTHA

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[5] A "compact" is merely "[a]n agreement or covenant between two or more parties." *See* Black's Law Dictionary 318 (9th ed. 2009).

to operate sports wagering if such wagering is permitted in New Jersey, and no further approval or other act on the part of the NJSEA is required to effectuate that authorization. Moreover, nothing in the 2014 Sports Wagering Law even purports to abrogate contractual provisions in the State's lease with the NJTHA. And the notion that the State of New Jersey has prevented itself, by statute, from deciding what may lawfully occur on its own property is preposterous. In any event, if the 2014 Sports Wagering Law really did force the NJSEA to tolerate the operation of sports gambling even on state-owned property, then that would simply reaffirm that the law itself authorizes state-sponsored gambling.

In short, New Jersey owns the property that it has leased to the NJTHA, and, as the owner of that property, it manifestly has the right to authorize what is done on that property. And, in violation of PASPA, it has authorized the NJTHA to operate sports gambling on that property. That violation should be enjoined.

B. The NJSEA Has Sponsored Sports Wagering At Monmouth Park

The lease between the NJSEA and the NJTHA further provides that the NJTHA's use and operation of Monmouth Park "shall be deemed to be sponsored" by the NJSEA. Specifically, the lease states:

> Authority Sponsorship. The Authority and Tenant acknowledge and agree that this Agreement constitutes a project of

> the Authority under the Enabling Legislation and Tenant's use and operation of the Premises for Racing Events, is in furtherance of and substantially related to the Authority's interests and responsibilities under, and the specific legislative purpose of, the Enabling Legislation and as such, ***Tenant's use and operation thereof shall be deemed to be sponsored by the Authority***.

(Marra Decl. Ex. A, § 33.06) (emphasis added).

The provision is consistent with the NJSEA's function as "an economic engine for the State of New Jersey by providing facilities and support" to sports and entertainment interests. (NJSEA Opp. Br. at 2.) Under the foregoing provision, the NJTHA's use and operation of the leased premises for sports wagering, if not enjoined, would be sponsored by the NJSEA, in violation of PASPA. The 2014 Sports Wagering Law does not in any way purport to abrogate this provision of the lease.

C. The NJSEA Would Derive Additional Revenues Tied To Sports Gambling

Finally, the lease makes clear that the NJSEA would derive revenue directly from the NJTHA's sports gambling activities, and thus be a participant in the sports wagering market. Under Article VII, if sports gambling were conducted at Monmouth Park, the NJSEA would receive a rent increase, based in

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part on "the existing market value of the [sports gambling] right" and "operating expenses" related to the sports gambling activity. (Marra Decl. Ex. A, § 7.02.) In addition, the lease provides that, beginning in 2017, the NJTHA's rent will be determined as a percentage of its "Net Operating Profits" (*id.* § 2.03(a)(ii)), which will be based on gross revenues (*id.* § 1.01), including sports gambling revenues if that activity is not enjoined.

* * * *

In light of the foregoing, the NJSEA's protestations that it is merely a passive landlord that has no ability to control what its tenant does on the State's property and has not authorized or sponsored the NJTHA to engage in sports wagering at Monmouth Park are simply false. As a governmental entity, the NJSEA may not, under any circumstances, sponsor, operate, advertise, promote, license or authorize by compact sports wagering on state-owned property, including Monmouth Park. And the NJTHA may not engage in sports wagering at Monmouth Park pursuant to a compact with the NJSEA. The lease agreement between the NJSEA and the NJTHA expressly authorizes and sponsors sports wagering at Monmouth Park, and confers on that sports wagering the very state imprimatur that PASPA renders unlawful. That clear violation of PASPA should be enjoined.

III. This Court Has Already Found That Defendants' Unlawful Conduct, If Not Preliminarily Enjoined, Would Cause Plaintiffs Irreparable Harm

This Court has already held in *Christie I* that plaintiffs would be irreparably harmed if New Jersey's casinos and racetracks were permitted to offer sports gambling. And defendants recognize that harm. As this Court has noted, the 2014 Sports Wagering Law expressly "carves out a prohibition on sports wagering on collegiate athletic contests occurring in the state or involving New Jersey colleges," a provision of the law that "belies any argument that plaintiffs are not injured by gambling on their games." (TRO Order, at 15.) There simply is no basis to relitigate the issue of irreparable injury.

Nonetheless, in their opposition papers, defendants make three collateral attacks on the *Christie I* decision. Each of these attacks fails.

First, defendants erroneously suggest that this Court based its prior findings of irreparable harm solely on the violation of PASPA. (NJTHA Opp. Br., at 26-27.) But, as plaintiffs have demonstrated, the damage to plaintiffs that would result from the 2014 Sports Wagering Law is irreparable, irrespective of whether PASPA is violated. (*See, e.g.*, TRO Order, at 12-15 (noting the harms caused by associating plaintiffs' games with gambling); Pls. TRO Reply, at 11-13; *see also* TRO Order, at 14 ("This assertion of reputational harm is a very real harm that would be a direct result of sports wagering on plaintiffs' games caused by defendants."); *Christie I*, No. 12-4947 (MAS) (LHG), 2012 WL 6698684, at *6 (D.N.J. Dec. 21, 2012) (citing studies that demonstrate irreparable harm to plaintiffs when sports are associated with or "in close geographic proximity to legalized gambling"); Pls.

56.1 Response (Dkt. 95-2), at 36-37, 58-63, 63-72 (discussing numerous harms identified during discovery).) In any event, PASPA is violated here, so defendants' argument is unavailing.

Second, defendants rely on the thirty-seven-year-old decision in *NFL v. Governor of Delaware*, 435 F. Supp. 1372 (D. Del. 1977), to argue that there can be no irreparable harm from sports gambling. (NJTHA Opp. Br. at 26; State Def. Opp. Br. at 25.) This case long predates the more recent and relevant decision in *Christie I*, as well as the congressional findings that led to the passage of PASPA fifteen years after the *NFL* case was decided. *See generally* S. Rep. No. 102-248 (1991).

And third, defendants challenge as "schizophrenic" plaintiffs' position that any repeal of the State's prohibition on sports wagering must be a complete deregulation, arguing that it is somehow irrational for plaintiffs to insist that defendants comply with PASPA's mandate that New Jersey choose between a complete ban and complete deregulation of sports betting within the State. (NJTHA Opp. Br. at 28; State Def. Opp. Br. at 25-26.) Defendants suggest that plaintiffs should prefer the limited containment of sports gambling in heavily regulated, state-licensed casinos and racetracks, rather than the decriminalization and complete deregulation of sports wagering everywhere within the State. (State Def. Opp. Br. at 25-26.) Relatedly, the NJTHA asserts that plaintiffs have "unclean hands" because they seek to enforce the proscriptions of PASPA while, for example, permitting their games to be played in jurisdictions that permit

sports gambling. (NJTHA Opp. Br. at 30.) These assertions conflate the issue of harm with the question of whether conduct is actionable under PASPA. The relevant provision of PASPA permits plaintiffs to challenge only sports wagering that has been sponsored, operated, advertised, promoted, licensed or authorized by law or compact by a governmental entity. Plaintiffs are not precluded from seeking to enjoin actionable conduct threatening them with irreparable injury here simply because other non-actionable conduct may also threaten plaintiffs with such injury.

In sum, defendants have not provided any basis whatsoever for this Court to reexamine the decision in *Christie I* with respect to the irreparable injury with which plaintiffs are threatened by defendants' unlawful conduct, or to come to a different conclusion about the existence of that irreparable injury.

IV. The Public Interest And The Balance Of Harms Favor The Issuance Of A Preliminary Injunction

Defendants contend that the harms to plaintiffs are outweighed by the purported economic benefits of legalized sports gambling in New Jersey, the monetary harms the NJTHA will suffer if unable to conduct sports betting, and the need of the State to enact laws as it sees fit. These same arguments were raised by these same parties in *Christie I* in opposing summary judgment and a permanent injunction. (*See, e.g.*, State Def. Sum. J. Opp. (Dkt. 76-1, at 39) (arguing that a permanent injunction would deprive the State of needed economic stimulus); NJTHA Rule 56.1 Stmt., ¶¶ 29-34 (Dkt 72-4) (arguing that sports wagering was

essential to the economic vitality of Monmouth Park and the horseracing industry); Legislators Sum. J. Opp. at 1-2, 14-15 (Dkt. 139) (arguing that enforcing PASPA would "expressly prohibit the Legislature from implementing its collective legislative judgment").)

For the same reasons these arguments were rejected in *Christie I*, they should be rejected here. As the Court correctly found in *Christie I*, there is no hardship at all in requiring defendants to comply with federal law, and "[t]he public interest is favored by protecting valid federal statutes from being infringed upon and upholding the mandates of the [Supremacy Clause]." *Christie I*, 926 F. Supp. 2d 551, 578 (D.N.J. 2013) (citing *Am. Civil Liberties Union v. Ashcroft*, 322 F.3d 240, 247 (3d Cir. 2003)).[6]

V. The 2014 Sports Wagering Law Should Be Enjoined In Its Entirety

The NJTHA suggests that, if this Court determines that the 2014 Sports Wagering Law violates PASPA, injunctive relief should be directed towards wagering only on plaintiffs' games, and not on the sporting events of other sports leagues and associations. This suggestion ignores the legal principle that, if a state law violates the Supremacy Clause of the

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[6] The public interest is similarly favored by protecting the New Jersey Constitution from violation by the 2014 Sports Wagering Law. *See Garden State Equality v. Dow*, 79 A.3d 479, 488 (N.J. Super. Ct. Law Div. 2013) (recognizing no public interest in a state's ability to enforce an unconstitutional law).

United States Constitution, federal courts may invalidate the state law in its entirety. *See Christie I*, 730 F.3d at 226 (noting that PASPA's preemption language operates "to invalidate state laws that are contrary to the federal statute"); *see also New Jersey Payphone Ass'n, Inc. v. Town of West New York*, 299 F.3d 235, 241 (3d Cir. 2002); *Ass'n for Fairness in Bus. v. New Jersey*, 82 F. Supp. 2d 353, 364 (D.N.J. 2000) (enjoining the enforcement of certain provisions of the Casino Control Act). Because there is no plausible basis on which the 2014 Sports Wagering Law could be deemed compliant with PASPA as to gambling on some, but not all, sporting events, the conclusion that the law is invalid in its entirety necessarily flows from the conclusion that it is invalid as to plaintiffs' games.

To the extent that the NJTHA relies on standing cases to support its request that the preliminary injunction bar gambling only on plaintiffs' games, that reliance reveals that the NJTHA has confused plaintiffs' right to bring a claim under PASPA with the remedy available to plaintiffs for a violation of PASPA. Although standing to challenge a violation of PASPA requires that plaintiffs' games be "the basis of such violation," PASPA provides that, as a remedy, plaintiffs may seek "to enjoin a violation of section 3702." 28 U.S.C. § 3703. Accordingly, given plaintiffs' likelihood of success in proving that the 2014 Sports Wagering Law violates PASPA, the Court may enjoin that violation of PASPA and prevent the NJTHA from offering gambling on all sports events, not just those of the five plaintiffs and their members.

VI. The Bond Amount Proposed By The NJTHA Is Speculative And Excessive

The NJTHA's baseless request that plaintiffs be ordered to post a bond exceeding $24 million to secure Monmouth Park's purported "lost profits" during the pendency of this litigation (NJTHA Opp. Br. at 38) should be rejected. That amount—based on Monmouth Park advisor Dennis A. Drazin's speculative conclusion that the racetrack would lose weekly profits of $1,170,219 (over $60 million in a year) if it were enjoined from operating a sports pool (*see* NJTHA TRO Opp. Br. at 36)—vastly exceeds any reasonable expectation of the profitability of Monmouth Park's sports betting operations.

Publicly available gambling data—including the same data that Mr. Drazin utilized—provide several reasons to conclude that Mr. Drazin's potential lost profit calculation is unsupported and should not be credited. First, Mr. Drazin predicates his calculation on the assumption that New Jersey has a "mature" sports betting market, which it currently does not. Second, Mr. Drazin's calculation assumes that a "mature" New Jersey sports betting market would be three times *larger* than Nevada's sports betting market. But, using a comparison of the mature New Jersey and Nevada casino wagering markets (excluding sports), the data show that, in 2013, such casino revenue in the Nevada market (approximately $10.9 billion) was four times larger than in the New Jersey market (approximately $2.8 billion), and that, conversely, the New Jersey market is only 26% the size of the Nevada market. (Dreyer Supp. Decl. ¶¶ 9-14.) There is no basis to assume that the relative size of sports betting markets in New Jersey and Nevada would differ in any meaningful way from the relative size of non-sports gambling markets in those two

states. Third, Mr. Drazin assumes that Monmouth Park would capture 10% of the New Jersey sports betting market, although he offers no basis for that assumption. And fourth, despite the fact that Monmouth Park's hotel and entertainment infrastructure and operations are minuscule compared to the hotel and entertainment infrastructure and operations in Nevada, Mr. Drazin predicts that Monmouth Park's *weekly* sports betting profits of $1.1 million would exceed the *annual* 2013 sports betting revenues of the average Nevada sports betting location, which collected $1.09 million in sports betting revenues for all of 2013, and would equal what the most lucrative Nevada gambling properties—those on the Las Vegas Strip, which collected approximately $2.4 million in sports betting revenues for all of 2013—make in six months. (*Id.* ¶¶ 15- 18.)[7]

The NJTHA also bases its requested bond amount on the assumption that this case will take seven months to reach final judgment. There is no reason to believe that this case would take that long. Unlike *Christie I*, this case does not require the Court to decide issues of standing and the constitutionality of PASPA. This case simply requires a construction of the 2014 Sports Wagering Law to determine that it

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[7] Mr. Drazin also conflates Nevada revenue figures with Monmouth Park profit figures, ignoring all the costs that Monmouth Park likely would incur to operate sports betting, including overhead, salaries, taxes, any increase in rent charged by defendant NJSEA based on such expansion of gambling activities, and any percentage of revenues that would be captured by William Hill, the third-party operator that Monmouth Park has reportedly retained to operate its sports book.

does not comply with PASPA, a determination that can be resolved by summary judgment, which plaintiffs are prepared to seek quickly if this Court is not inclined to enter summary judgment *sua sponte* under the authority of *Markell*.

In light of the foregoing, the NJTHA's estimate of its purported lost profits cannot be accepted, and the current bond of $3.4 million posted in connection with the temporary restraining order is fully adequate—indeed, far exceeds—the amount necessary to secure any potential losses that Monmouth Park might sustain in the event that the injunction were improvidently granted. If any adjustment at all should be made to the amount of the bond, it should be reduced, not increased as the NJTHA has requested.

Conclusion

For the foregoing reasons, this Court should: (i) issue a preliminary injunction pending a judgment on the merits of plaintiffs' complaint enjoining defendants from sponsoring, operating, advertising, promoting, licensing or authorizing by compact any sports wagering scheme at any Atlantic City casinos or New Jersey racetracks, including, particularly, the Monmouth Park Racetrack; and (ii) enforce this Court's previous injunction against the *Christie I* defendants.

Dated: November 7, 2014

Respectfully Submitted,

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Caputo Statement on Federal Sports Gaming Ruling

Caputo Statement on Federal Sports Gaming Ruling (28th LEGISLATIVE DISTRICT) - Assembly Tourism and Gaming Chairman Ralph Caputo (D-Essex), the lead Assembly sponsor of efforts to bring sports gaming to New Jersey, released the following statement Friday on the federal court ruling delaying the start of betting:

"I'm disappointed in the judge's ruling. All it does is delay the inevitable.

"Sports gaming is a reality, albeit a mostly illegal one. All New Jersey is trying to

do is legally implement well regulated sports gaming and even the playing field

with other states. It's time for the courts to get out of the way and allow New

Jersey to decide its own gaming laws.
"I remain confident New Jersey will prevail in this case."

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

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November 17, 2014

Honorable Michael A. Shipp, U.S.D.J.
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Re: *Nat'l Collegiate Athletic Ass'n v. Christopher J. Christie, et al.*,
No. 3:14-cv-6450 (MAS)(LHG)

Dear Judge Shipp:

This office represents Governor Christopher J. Christie, David L. Rebuck, and Frank Zanzuccki (the "State Defendants") in the above-referenced action. On November 10, 2014, the Court entered an order advising the parties that it "intends to consolidate the application for a preliminary injunction with a decision on the merits." The court invited the parties to

submit correspondence today concerning "additional considerations or issues in connection with such consolidation." In response to that Order, the State Defendants submit this letter and are contemporaneously filing a Statement of Undisputed Material Facts.

The Court's November 10 order did not indicate the procedure by which the Court intends to reach a decision on the merits in this action now, at a stage before any defendant has answered the Plaintiffs' complaint. In the view of the State Defendants, of two possible procedural avenues for doing so summary judgment under Federal Rule of Civil Procedure 56, or advancing the trial on the merits under Rule 65(a)(2)—summary judgment is the more appropriate.

This Court's Local Rule 56.1 provides that a movant for summary judgment "shall furnish a statement which sets forth material facts as to which there does not exist a genuine issue," and that a "motion for summary judgment unaccompanied by a statement of material facts not in dispute shall be dismissed." The State Defendants accordingly submit herewith a Statement of Undisputed Materials Facts so that, in the event the Court treats the briefing on the Plaintiffs' motion for a preliminary injunction as cross-motions for summary judgment, the Court will have before it the necessary support to grant summary judgment in favor of the State Defendants. The statement of undisputed facts references the 2014 Act at issue in this case, which is a matter of record. The Act states on its face that it is not and shall not be construed as a State authorization of sports wagering, and it explicitly repeals any law or regulation that would entangle

the State in the conduct of such activity where it is lawful. The State Defendants, moreover, have submitted declarations—unchallenged by Plaintiffs—making clear that, in accordance with the text of the 2014 Act, where sports wagering is lawful, State gambling regulators will have no involvement in it. The State Defendants respectfully submit that this uncontroverted evidence supports summary judgment in the State Defendants' favor.

The other procedural option for proceeding immediately to judgment is Rule 65(a)(2), which permits a court to "advance the trial on the merits and consolidate it" with the hearing on a motion for a preliminary injunction. The State Defendants respectfully submit that it would be inappropriate to hold the trial on the merits before any defendant has filed a responsive pleading. This is especially true here, where the State Defendants have put forward jurisdictional defenses under the Eleventh Amendment that bar subjecting the State Defendants to a trial.

For these jurisdictional reasons, and also because of the obvious practical difficulties of preparing for a trial on the merits just three days hence, the State Defendants suggest that summary judgment under Rule 56 is the more appropriate avenue for proceeding directly to a decision on the merits.

Respectfully, the State Defendants object to proceeding immediately to a trial on the merits. If the Court determines, over defendants' objections, to convert the hearing scheduled on November 20 into a trial on the merits, the State Defendants request that the three declarations submitted with its opposition to

the Plaintiffs' motion for a preliminary injunction be admitted as substantive evidence in that proceeding, without the need to call the declarants as live witnesses. *See* Fed. R. Civ. P. 65(a)(2) ("evidence that is received on the motion [for a preliminary injunction] and that would be admissible at trial becomes part of the trial record and need not be repeated at trial"). The State Defendants further request that Plaintiffs be ordered to produce immediately a list of exhibits on which they intend to rely at trial, and a list of witnesses whom they may call.

Respectfully submitted,

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: _____
Jeffrey S. Jacobson
Director, Division of Law

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION *et al.*, Plaintiffs, v. CHRISTOPHER J. CHRISTIE, *et al.*, Defendants.	Civil Action No. 3:14-06450 (MAS) (LHG) Honorable Michael A. Shipp, U.S.D.J. (Return date: November 20, 2014)

STATE DEFENDANTS' STATEMENT OF UNDISPUTED MATERIAL FACTS

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In light of this Court's order, dated November 10, 2014, notifying the parties that it intends to reach the merits of Plaintiffs' claims, and inviting the parties to submit any additional documentation relevant to its decision to consolidate Plaintiffs' Motion for a Preliminary Injunction with a decision on the merits, Defendants Christopher J. Christie, David L. Rebuck, and Frank Zanzuccki (the "State Defendants") hereby submit this Statement of Undisputed Material Facts.

The Sports Wagering Market & Legal Framework

1. The Professional and Amateur Sports Protection Act ("PASPA"), 28 U.S.C. § 3701 *et seq.*, makes it "unlawful" for "a governmental entity to sponsor, operate, advertise, promote, license, or authorize by law or compact ... a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly (through the use of geographical references or otherwise), on one or more competitive

games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games." *Id.* § 3702.

2. Because Plaintiffs have not submitted any new evidence in support of their allegations, Defendants incorporate by reference the Statement of Undisputed Facts filed in the prior action in support of their Cross-Motion for Summary Judgment. *See* No. 12-4947, ECF 76-2 ("SUMF"). A few of the more salient facts are repeated below for convenience.

3. The amount of legal and illegal sports gambling in the United States has increased substantially since 1960. SUMF ¶ 7.

4. The annual volume of legal sports wagering in Nevada increased from approximately $1.5 billion shortly before PASPA's enactment to $2.9 billion in 2011. SUMF ¶ 8.

5. The total volume of sports wagering in the United States is estimated to be in the hundreds of billions of dollars annually, with the illegal sports wagering market having increased from an estimated $50 billion in 1989 (adjusting for inflation) to an estimated range of $270 to $500 billion in 2011. SUMF ¶ 15.

6. Less than 1 percent of the estimated betting on sports that occurs annually in the United States consists of wagers placed legally in Nevada. SUMF ¶ 16.

7. The Commissioner of the National Basketball Association has called for the repeal of PASPA and the expansion of government-sponsored sports betting, contending now that regulated sports wagering would be good public policy. *See* Adam Silver, *Legalize and Regulate Sports Betting*, N.Y. TIMES, Nov. 13, 2014, available at http://www.nytimes.com/2014/11/14/opinion/nba-commissioner-adam-silver-legalize-sports-betting.html

New Jersey's Now-Repealed 2012 Sports Wagering Law ("2012 Law")

8. In 2012, following the voters' approval of an amendment to the New Jersey Constitution, the New Jersey Legislature legalized sports betting pools operated by New Jersey casinos and racetracks and provided for a detailed regulatory regime for sports wagering akin to the one currently governing other forms of casino gaming, such as poker, blackjack, or the simulcasting of horse racing. *See* Rebuck Decl. ¶ 4; N.J. Stat. Ann. § 5:12A-1 *et seq.*

9. The 2012 Law provided that the Division of Gaming Enforcement ("DGE") would have had general responsibility for, and served an active role in, promulgating and administering regulations specifically applicable to sports wagering at casinos and racetracks. Rebuck Decl. ¶ 4; Levinson Decl. ¶ 6.

10. Under the 2012 Law, a casino or racetrack was permitted to offer sports wagering only if it obtained a license from the State specifically authorizing such betting. N.J. Stat. Ann § 5:12A-2.

11. Under the 2012 Law, DGE would have had primary responsibility for issuing that sports wagering license, which was required "in addition to" any other license necessary to operate the casino or racetrack. N.J. Stat. Ann. § 5:12A-2; Zanzuccki Decl. ¶ 7.

12. Under the 2012 Law, only a casino licensed by the Casino Control Commission ("CCC") or a racetrack licensed by the New Jersey Racing Commission ("NJRC") would have been eligible for a license to operate a sports wagering pool. Levinson Decl. ¶ 6.

13. Key employees, such as those with managerial oversight or discretion over sports wagering operations or otherwise deemed, upon review of the CCC, to be "directly involved in sports pool wagering," would have required a license issued by the CCC as well. Levinson Decl. ¶ 6; N.J. Admin. Code § 13:69N-1.8.

14. After the enactment of the 2012 Law, DGE promulgated regulations to implement it. *See* Rebuck Decl. ¶ 4; N.J. Admin. Code § 13:69N *et seq.*

15. These regulations, which were subsequently enjoined by the federal courts and repealed by P. L. 2015, c. 62 ("2014 Act"), set forth the procedures and eligibility requirements for casinos and racetracks to obtain sports betting licenses. Rebuck Decl. ¶ 4.

16. Under the 2012 Law and the DGE regulations promulgated under it, sports pools would have been restricted to designated "sports lounges" within a casino or racetrack and would have been subject to

a number of detailed requirements, including using tested and approved equipment, utilizing the same kind of surveillance and security measures employed in other gaming areas within the casino, and displaying the wagering odds according to prescribed standards. Rebuck Decl. ¶ 5; N.J. Stat. Ann. § 5:12A-2(b), (c).

17. Under the 2012 Law, DGE also would have regulated a number of other aspects of sports wagering operations, akin to its regulation of other games, including, among others:

a. A sports pool's amount of cash reserves, N.J. Stat. Ann. § 5:12A-4(a); N.J. Admin. Code § 13:69N-2.5;

b. Acceptance of wagers on a series of sports events, N.J. Stat. Ann. § 5:12A-4(b);

c. Maximum wagers from any one patron on any one event, *id.* § 5:12A-4(c);

d. Types of permissible wagering tickets and methods by which they may be issued, *id.* § 5:12A-4(d), (e); N.J. Admin. Code § 13:69N-2.3(b);

e. Methods of accounting to be used by operators, N.J. Stat. Ann. § 5:12A-4(f); N.J. Admin. Code § 13:69N-1.11;

f. Systems of internal controls, including the "reconciliation of assets and

documents contained in the wagering cashier's drawers" and reporting of any overage or shortage, N.J. Admin. Code § 13:69N-2.2(d);

g. Types of records to be kept, N.J. Stat. Ann. § 5:12A-4(g);

h. Examination of accounts and records by state officials, N.J. Admin. Code § 13:69N-3.1(d);

i. Patrons' payment methods, N.J. Stat. Ann. § 5:12A-4(h);

j. Types of systems used for wagering, *id.* § 5:12A-4(i); N.J. Admin. Code § 13:69N-1.12;

k. Protections for persons placing wagers, N.J. Stat. Ann. § 5:12A-4(j); N.J. Admin. Code § 13:69N-1.9;

l. Display of the 1-800-GAMBLER hotline, N.J. Stat. Ann. § 5:12A-4(k);

m. Maintenance of exclusion lists, *id.* § 5:12A-2(e); and

n. Adoption of comprehensive house rules governing sports wagering transactions, covering things such as the amount to be paid on winning wagers and the effect of schedule changes, *id.* § 5:12A-5.

18. In conjunction with DGE, NJRC also would have played a role in giving approval to any vendor or operator employed by a racetrack to offer sports wagering. Zanzuccki Decl. ¶ 7; N.J. Stat. Ann. § 5:12A-2.

19. The vendor approval process under the 2012 Law would have involved, among other things, a criminal background check and an investigation of the vendor's financial health. Rebuck Decl. ¶ 7.

20. The 2012 Law and all of the regulations promulgated thereunder have been repealed by the 2014 Act. Rebuck Decl.¶ 4.

New Jersey's 2014 Act

21. On October 16, 2014, the New Jersey Legislature overwhelmingly passed the 2014 Act, which is designated as "[a]n Act partially repealing the prohibitions, permits, licenses, and authorizations concerning wagers on professional, collegiate, or amateur sports contests or athletic events." P. L. 2015, c. 62 at 2:1–3.

22. The 2014 Act states that it separately repeals: (a) the 2012 Law in its entirety, *see* P. L. 2015, c. 62, § 5; (b) provisions in the New Jersey criminal code (N.J. Stat. Ann. § 2C:37 *et seq.*), the New Jersey civil code (*id.* § 2A:40 *et seq.*), including the Casino Control Act (*id.* § 5:12-1 *et seq.*), other provisions of chapter 5 of Title 5 of the Revised Statutes (which regulate racetracks), as well as any other rules or regulations that prohibit participation in or operation of sports pools, to the extent those laws apply at consenting racetracks, casinos, and certain former racetracks,

see P. L. 2015, c. 62, § 1; and (c) "any rules and regulations that may require or authorize any State agency to license, authorize, permit, or otherwise take action to allow any person" to engage in sports wagering, *id.*

23. The 2014 Act explicitly states that it shall not be construed to sponsor, operate, advertise, promote, license or authorize by law sports wagering. P. L. 2015, c. 62, § 2.

24. The 2014 Act, unlike the 2012 Law, is entirely self-executing and requires no action on the part of any regulator at DGE, CCC, or NJRC in order to take effect. Rebuck Decl. ¶ 7; Zanzuccki Decl. ¶ 8.

25. The 2014 Act prohibits any of the regulators from applying or enforcing any of the provisions of the Casino Control Act, which, in the absence of the 2014 Act, otherwise would have applied to sports wagering. Rebuck Decl. ¶ 11.

26. The 2014 Act likewise prohibits any of the regulators from applying or enforcing any of the laws and regulations governing other forms of wagering at racetracks, such as pari-mutuel wagering or simulcasting, which, in the absence of the 2014 Act, may have applied to sports wagering. Zanzuccki Decl. ¶ 10.

27. Neither DGE nor NJRC may investigate the background or financial health of any on-premises sports wagering vendors, nor may they mandate which vendor a casino or racetrack may employ. Rebuck Decl. ¶ 7; Zanzuccki Decl. ¶ 8.

28. Unlike the 2012 Law, which required sports pool operators to obtain a license, and restricted the individuals or entities who could apply for a license to casinos and racetracks exclusively, the 2014 Act permits private parties to operate a sports pool on the premises of a casino or racetrack and does not require them to obtain a sports pool license from the State in order to operate their pool. Levinson Decl. ¶¶ 6, 8; Rebuck Decl. ¶ 7.

29. Unlike the 2012 Law, which required some "key" employees (as that term is defined in N.J. Stat. Ann. § 5:12-9) to have a license to work at a sports wagering pool, the 2014 Act does not require "key" sports wagering pool employees to obtain a license for that purpose. Levinson Decl. ¶ 7.

30. Under the 2014 Act, the CCC will have no role at all in evaluating "key" employees or their credentials. Levinson Decl. ¶ 7.

31. The 2014 Act leaves the CCC with no regulatory authority with respect to sports wagering. Levinson Decl. ¶ 8.

32. Unlike the 2012 Law, the 2014 Act prevents DGE from enforcing or maintaining a voluntary self-exclusion list of persons who are to be prohibited from participating in a sports wagering pool, even though such lists are maintained for other games within the casino. Rebuck Decl. ¶ 8.

33. Pursuant to the 2014 Act, DGE will not require sports pool lounges to use the same surveillance and security measures that it requires for other gaming areas. Rebuck Decl. ¶ 9.

34. Neither DGE nor NJRC will have any direct role in enforcing, or prosecuting violations of, criminal or civil laws, such as the consumer fraud protection statutes, that apply to all persons and businesses equally throughout the State, and any crimes involving sports wagering pools or participants will be handled the same way as any other crime involving any other person or business. Zanzuccki Decl. ¶ 9; Rebuck Decl. ¶ 10.

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35. Under the 2014 Act, DGE will not monitor or concern itself with whether a casino elects to operate a sports pool, or the way a casino goes about operating a sports pool. DGE now considers sports wagering to be "non-gambling activity" akin to fantasy sports betting or "social gaming" that is beyond DGE's control or regulatory authority. Rebuck Decl. ¶ 12.

Dated: November 17, 2014

Respectfully submitted,

By: /s/ Jeffrey Jacobson

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November 17, 2014

BY ECF

Hon. Michael A. Shipp, U.S.D.J.
U.S. District Court for the District of New Jersey
Clarkson S. Fisher Building and U.S. Courthouse
402 East State Street
Trenton, NJ 08608

RE: National Collegiate Athletic Association, et al. v.
Christopher J. Christie, et al., C.A. No. 3:14-cv-6450 (MAS)(LHG)

Dear Judge Shipp:

We represent Defendant New Jersey Thoroughbred Horsemen's Association, Inc. ("NJTHA") in the above-referenced action. On November 10, 2014, Your Honor entered a Text Order advising the parties "that the Court intends to consolidate the application for a

preliminary injunction with a decision on the merits." On behalf of the NJTHA, we respectfully object to the consolidation referred to in Your Honor's Text Order.

The Text Order does not cite the Federal Rule of Civil Procedure under which it is issued. We assume (because it is the relevant Rule dealing with consolidating a preliminary injunction hearing with a trial on the merits) that the Court is acting pursuant to Federal Rule of Civil Procedure 65(a)(2), which provides:

> *Consolidating the Hearing with the Trial on the Merits.* Before or after beginning the hearing on a motion for a preliminary injunction, the court may advance the trial on the merits and consolidate it with the hearing. Even when consolidation is not ordered, evidence that is received on the motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial. But the court must preserve any party's right to a jury trial.

As its text makes clear, what Rule 65(a)(2) permits the Court to do is to "advance the trial on the merits." Under Rule 65(a)(2), the preliminary injunction hearing itself would be converted into the actual trial on the merits, whether it be a jury or non-jury trial.

In an effort to facilitate a prompt decision on the plaintiffs' motion for a preliminary injunction, we agreed in an October 27 joint letter to Your Honor (i)

to take no discovery in connection with plaintiffs' preliminary injunction motion, (ii) not to insist on an evidentiary hearing on that motion, and (iii) that the proceeding on November 20, 2014, would consist only of oral argument. Our agreement to forego discovery and an evidentiary hearing on plaintiffs' request for a preliminary injunction (where a plaintiff need show a likelihood of success on the merits but not fully prove its case) was not meant to be, nor was it, a waiver of NJTHA's right to have a trial on the merits. The NJTHA has not, and will not, waive its right to a full trial on the merits.

At the outset, it is important to note that "it is generally inappropriate for a federal court at the preliminary-injunction stage to give a final judgment on the merits." *University of Texas v. Camenisch*, 451 U.S. 390, 395 (1981). Any decision whether to consolidate under Rule 65(a)(2) "must be tempered by the due process principle that fair notice and an opportunity to be heard must be given the litigants before the disposition of a case on the merits." *K-Mart Corp. v. Oriental Plaza, Inc.*, 875 F.2d 907, 913 (1st Cir.1989) (quoting 11 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure*, § 2950 (1st ed.1973)). A "district court must provide 'clear and unambiguous notice ... before the hearing commences or at a time which will still afford the parties a full opportunity to present their respective cases." *American Train Dispatchers Dep't of Int'l Bhd. v. Ford Smith R.R. Co.*, 121 F.3d 267, 270 (7th Cir. 1997) (quoting *Pughsley v. 3750 Lake Shore Drive Coop. Bldg.*, 463 F.2d 1055, 1057 (7th Cir. 1972)). "Accordingly, ordering consolidation during the course of a preliminary-injunction hearing is reversible error when little or no

notice is given of this change and the effect is to deprive a party of the right to present the case on the merits." 11A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure*, § 2950 (3d ed. 2013).

If the Court intends, by its Text Order, to mean that it intends to advance and conduct the full trial on the merits on Thursday, November 20, 2014, then we object because to do so would deprive the NJTHA of fair notice and an opportunity to be heard. At a trial on the merits, whether jury or nonjury, the plaintiffs will bear the burden of proof, by a preponderance of the evidence, on each and every element of their claims, including proof of irreparable harm. *See, e.g.*, *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139 (2010) ("[A] plaintiff seeking a permanent injunction must satisfy a four-factor test before a court may grant such relief. A plaintiff must demonstrate: (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction." (quoting *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006))). In addition to cross-examining the plaintiffs' witnesses, the NJTHA will need to call witnesses both to respond to the plaintiffs' evidence and to support its

own affirmative defenses, including unclean hands.[1] Further, we will need the opportunity to offer proofs as to the hardships the NJTHA and public will sustain if an injunction is granted. None of this can possibly happen a mere three days from today.

This case is at its earliest stages. Plaintiffs' Complaint was filed on October 20, 2014. Counsel for the NJTHA agreed to accept service on behalf of NJTHA on November 4, 2014. The NJTHA's Answer with Affirmative Defenses is not due, at the earliest, until November 25, 2014. Nor is any decision whether to make a jury demand due before that date. *See* Fed. R. Civ. P. 38.

Though we have not been so advised, plaintiffs may agree that a full trial on the merits cannot possibly take place on November 20. They may suggest that summary judgment would be appropriate. *See* Leagues' Reply Brief at 8 (suggesting that "this Court currently has all of the information it needs to render summary judgment in plaintiffs' favor"). But the

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[1] The witnesses called by the NJTHA may well include officers and employees of the plaintiffs. If those witnesses do not appear voluntarily and are beyond this Court's trial subpoena power, *see* Fed. R. Civ. P. 45(c), a deposition will be necessary in order to present their testimony at trial. *See* Fed. R. Civ. P. 32(a) (governing use of depositions at trial). But under Rule 26(d), the NJTHA cannot even notice such depositions, because it is simply too early in the case to do so. Indeed, even if somehow a deposition were conducted before November 20, 2014, it might not be admissible in evidence precisely because of the insufficient time between the noticing of the deposition and its taking. *See* Fed. R. Civ. P. 32(a)(5) (limiting the use of depositions taken on less than 14 days' notice).

plaintiffs have not moved for summary judgment, nor does Your Honor's Text Order cite to Rule 56.[2] Plaintiffs have done nothing to "identify[] each claim or defense or the part of each claim or defense on which summary judgment is sought." They have not "show[n] that there is no genuine dispute as to any material fact and [they are] entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). They have not "support[ed]," as they "must," any assertion "that a fact cannot be ... genuinely disputed" by "citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials." Fed. R. Civ. P. 56(c). Nor have the plaintiffs complied with this Court's Local Rule 56.1, and submitted "a separate document (not part of a brief)," that does "not contain legal argument or conclusions of law," consisting of "a statement which sets forth material facts as to which there does not exist a genuine issue, in separately numbered paragraphs citing to the affidavits and other documents submitted in support of the motion." As Local Rule 56.1 makes clear, "[a] motion for summary judgment unaccompanied by a statement of material facts not in dispute shall be dismissed." We, therefore, respectfully object to converting the preliminary injunction hearing on November 20 into a hearing on plaintiffs' suggestion (not motion)

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[2] Plaintiffs' citation to *Office of the Commissioner of Baseball v. Markell*, 579 F.3d 293 (3d Cir. 2009) (Leagues' Reply Brief at 8-9) does not support their position here for several reasons, including, *inter alia*, the fact that the *Markell* decision was decided before the 2010 amendments to Rule 56.

that this case may be appropriate for disposition by summary judgment.

To the extent Your Honor may be considering a summary judgment *sua sponte*, we respectfully object. The Court may "consider summary judgment on its own," without awaiting a motion by a party, *see* Fed. R. Civ. P. 56(f), though, as the Advisory Committee Notes observe, "in many cases it may prove useful first to invite a motion; the invited motion will automatically trigger the regular procedure of subdivision (c)." 2010 Advisory Committee Notes on Fed. R. Civ. P. 56(f). The case law, however, cautions great care be used before granting summary judgment *sua sponte*. *See, e.g.*, *First American Kickapoo Operations, LLC v. Multimedia Games, Inc.*, 412 F.3d 1166, 1170 (10th Cir. 2005) ("we do not encourage the practice of granting summary judgment *sua sponte*"); *Massey v. Congress Life Ins. Co.*, 116 F.3d 1414, 1417 (11th Cir. 1997) ("[D]istrict courts must temper their exercise of [the] power [to trigger summary judgment on their own initiative] by the need to ensure that the parties receive adequate notice that they must bring forward all of their evidence."); *Ramsey v. Coughlin*, 94 F.3d 71, 74 (2d Cir. 1996) ("Before granting summary judgment *sua sponte*, the district court must assure itself that following the procedures set out in Rule 56 would not alter the outcome. Discovery must either have been completed, or it must be clear that further discovery would be of no benefit. The record must, therefore, reflect the losing party's inability to enhance the evidence supporting its position and the winning party's entitlement to judgment."); *Wilkins v. Wetzel*, No. 2:12-CV-1152, 2013 WL 5504491, at *9 (W.D. Pa. Oct.

3, 2013) ("A court's *sua sponte* grant of summary judgment must be undertaken with the utmost caution given the serious consequences to the adversarial party.") Further, before a court can grant summary judgment *sua sponte*, it must first give "notice and a reasonable time to respond." *See, e.g.*, *Atkins v. Salazar*, 677 F.3d 667, 678 (5th Cir. 2011) ("[W]e have vacated summary judgements [sic] and remanded for further proceedings where the district court provided no notice prior to granting summary judgment *sua sponte,* even where summary judgment may have been appropriate on the merits," (quoting *Leatherman v. Tarrant Cnty. Narcotics Intelligence & Coordination Unit*, 28 F.3d 1388, 1398 (5th Cir. 1994))).

As of the date of this letter–again, a mere three days before the scheduled oral argument–the Court has provided no notice that it is considering summary judgment *sua sponte*. The Court's Text Order cannot be viewed as providing such notice, because it does not refer to summary judgment, and instead refers to consolidating the preliminary injunction with the merits, a clear reference to Federal Rule of Civil Procedure 65(a)(2). Moreover, the Text Order does not "identify[] for the parties material facts that may not be genuinely in dispute," as Rule 56(f) requires. Therefore, we respectfully object to Your Honor converting the November 20 preliminary injunction hearing into a *sua sponte* summary judgment hearing.

Even if the plaintiffs had timely moved for summary judgment, or the Court had given sufficient notice of an intent to consider summary judgment on its own, converting the November 20 preliminary injunction hearing into a summary judgment hearing would

be improper. For example, the NJTHA intends to assert plaintiffs' unclean hands as an affirmative defense, thereby barring plaintiffs from obtaining the equitable relief they seek in this action. To support the NJTHA's unclean hands defense, the NJTHA intends to seek document and deposition discovery from each of the plaintiffs regarding their actions and statements that are completely inconsistent with their efforts to enjoin the NJTHA in this action.

The NJTHA intends to pursue depositions and documentary discovery regarding the relationship between the plaintiffs, the plaintiffs' individual teams, and the plaintiffs' individual players with professional gamblers, gambling business enterprises inside and outside the United States, and fantasy sports businesses. The NJTHA will also seek discovery regarding the fantasy sports businesses sponsored and/or owned by the plaintiffs, the plaintiffs' players who participate in fantasy sports wagering, as well as fantasy sports participants who have relationships with the plaintiffs, their teams, or the plaintiffs' players.

In particular, the NJTHA intends to seek discovery concerning the plaintiffs' investment and other involvement in daily and weekly fantasy betting on their respective sports, including that of the NFL, the NBA, the NHL, and Major League Baseball. *See, e.g.*, Darren Heitner, *FanDuel and DraftKings Dueling Over Team and League Partnerships*, Forbes (November 14, 2014), http://www.forbes.com/sites/darrenheitner/2014/11/14/fanduel-and-draftkings-dueling-over-team-and-league-partnerships/2/, attached to the accompanying Certification of Ronald J. Riccio ("Riccio Certification") as Exhibit A; Marc Edelman, *7 Legal*

Risks of the NBA Investing in FanDuel, Forbes (November 13, 2014), http://www.forbes.com/sites/marcedelman/2014/11/13/7-legal-risks-of-the-nba-investing-infanduel/, attached as Exhibit B to the Riccio Certification. These articles make it clear that the Leagues have become business competitors of the NJTHA with regard to sports betting rather than supposed guardians of their reputations or the integrity of their games. As the NJTHA's business competitors, who have huge economic incentives to protect, the NJTHA may well have counterclaims against the Leagues.[3]

Recent comments by NBA Commissioner Silver extolling the benefits of sports betting on NBA games (Adam Silver, *Legalize and Regulate Sports Betting*, N.Y. Times (November 14, 2014), http://www.nytimes.com/2014/11/14/opinion/nba-commissioner-adam-silver-legalize-sports-betting.html?_r=0, attached as Exhibit C to the Riccio Certification), echoed by Dallas Mavericks owner Mark Cuban (Ken Berger, *Cuban: Silver 'Exactly Right" on Sports Betting* (November 14, 2014),

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[3] Discovery is needed, for instance, to determine the extent to which the Leagues themselves as well as their players (without apparently any objection whatsoever from the Leagues) participate and promote gambling on the "performances" of League athletes, which lie at the heart of fantasy sports betting games. Based on information on the Leagues' and other fantasy sports betting company websites, the investment and participation in, and promotion of, fantasy sports by the plaintiffs, its member teams, and its players is greater now than ever before.

http://www.cbssports.com/nba/writer/ken-berger/24806648/cuban-silvercexactly-right-on-sports-betting, attached as Exhibit D to the Riccio Certification), are proper subjects for discovery with respect to the Leagues' alleged irreparable injury and the public interest.[4]

Whoever is the losing party on plaintiffs' application for a Preliminary Injunction will, in all probability, appeal, as of right, to the Court of Appeals for the Third Circuit. 28 U.S.C. 1292(a). While the record on appeal will be sufficient for purposes of reviewing the Court's decision to grant or deny a Preliminary Injunction, the appellate record will be woefully inadequate for the Circuit to review any final judgment on the merits, *i.e.*, no Answer to the Complaint, no discovery, no opportunity to evaluate counterclaims, no trial testimony from material witnesses, and no compliance with any of the rules governing disposition of summary judgment motions.

We respectfully submit that it would be fundamentally unfair to the NJTHA to convert the November 20 oral argument on plaintiffs' motion for a Preliminary Injunction into either a trial on the merits or a summary judgment hearing. To attempt to have a trial on the merits or summary judgment hearing on

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[4] For similar reasons, discovery is needed with respect to the "Devils and the Philadelphia 76ers partner[ing] with an online gambling company." *See* Ken Belson, Will Other Leagues Join NBA? Don't Bet on It, N.Y. Times (November 14, 2014), http://www.nytimes.com/2014/11/15/sports/not-all-leagues-ready-to-go-all-in-on-legalized-gambling.html?ref=sports, attached as Exhibit E to the Riccio Certification.

November 20 will deprive the NJTHA's more than 3,000 members of their fundamental Due Process rights to have their day in Court after fair notice and a reasonable opportunity to be heard.

Respectfully submitted,

MCELROY, DEUTSCH, MULVANEY & CARPENTER, LLP

/s/ Ronald J. Riccio
Ronald J. Riccio

cc: Counsel of Record (by ECF)

EXHIBIT A

FanDuel and DraftKings Dueling Over Team And League Partnerships

The biggest news concerning FanDuel this week revolves around a new partnership that it has brokered with the National Basketball Association (NBA), which is a four year deal that includes FanDuel's commitment to make an investment in the daily fantasy sports website. However, the same day that a league-wide deal was announced by the NBA and FanDuel, the daily fantasy sports operator also entered into a business relationship with the Dallas Mavericks, a team TISI -0.49% that performs within the Western Conference of the NBA. The week of November 10-14, 2014 may go down as the largest week for daily fantasy sports' related announcements in the history of the sector. It began on Monday with DraftKings revealing its own league-wide partnership with the National Hockey League (NHL) and may end with FanDuel's announcement of its first agreement with a National Football League (NFL) team — the Washington Redskins — an arrangement that is being referred to as a "fully integrated marketing agreement," that will prominently showcase FanDuel in-stadium, on Redskins' digital and social media platforms, as well has include retired tight end Chris Cooley taking an active role in promoting the fantasy sports operator. "The Washington Redskins executive team is forward thinking, innovative and run a world-class operation," said FanDuel CEO Nigel Eccles this morning. "The Redskins are an invaluable strategic partner for FanDuel as we continue to bring one-day fantasy football to the masses." There appears to be a

type of 'gold rush' between the fantasy giants in securing partnerships with major professional sports leagues and the teams situated therein.

According to information provided by FanDuel, in addition to deals already discussed with the NBA, Dallas Mavericks and Washington Redskins, the daily fantasy sports operator also has partnerships with the NBA's Orlando Magic, Brooklyn Nets, New York Knicks and Chicago Bulls. Additionally, FanDuel has a partnership with sports writer Jay Glazer. DraftKings also currently has one NFL team partnership in place, and it is with the New England Patriots. In addition to its partnership with the NHL on a league-wide basis, DraftKings has been busy signing up individual teams to assist in promotional efforts, including the Boston Bruins, St. Louis Blues and New York Rangers. The "league level" has appeared to be of importance to the operator, which has also entered into partnerships with Major League Baseball (MLB), World Series of Poker, World Poker Tour and most recently partnered with the Breeders Cup in August. DraftKings also has a deal in place with Fox Sports.

FanDuel does not list any MLB teams as being sponsors and DraftKings advises that while it had entered into formal relationships with eight baseball teams, including the Boston Red Sox and Kansas City Royals, those deals have expired and new contracts will be signed for the upcoming MLB season.

The next big announcement may be the NFL entering into a partnership with one of the major daily fantasy sports operators. With the NBA signed to a deal with FanDuel and DraftKings dominating MLB

and NHL, both daily fantasy sports entities will likely be pushing hard to create an association with the NFL, which is widely regarded as the most attractive professional sports league in the United States. Additionally, only two NFL teams are currently under contract with either FanDuel or DraftKings (the Redskins and Patriots, respectively). It should be expected that many more announcements will be coming regarding such team-level partnerships as well.

Separately, FanDuel's partnership agreement with the NBA does not preclude DraftKings from expanding its reach in the sport of basketball by associating it with individual teams within the league. DraftKings is said to have its sights on the Los Angeles Clippers, Golden State Warriors and a handful of other teams, including the Boston Celtics, which is based in the same city where DraftKings' headquarters are located.

Meanwhile, new entrants appear to be unfazed by the dominance asserted by FanDuel and DraftKings in the daily fantasy sports space. Despite FanDuel reporting revenue of $8.9 million in Q3 of 2014, startups like FantasyDraft are sprouting up with support of their own. FantasyDraft announced its creation with the signing of endorsement contracts with NFL wide receivers T.Y. Hilton of the Indianapolis Colts and Jordy Nelson of the Green Bay Packers. Of course, the announcement of FantasyDraft's launch occurred this week, the same week that was already loaded with major daily fantasy sports news.

Darren Heitner is a lawyer and the Founder of South Florida-based HEITNER LEGAL, P.L.L.C.,

which has a focus on Sports Law and Entertainment Law.

EXHIBIT B

7 Legal Risks Of The NBA Investing In FanDuel

Marc Edelman

Yesterday, NBA owners made the unprecedented decision to become equity investors in the daily fantasy sports business, FanDuel. Unlike its past sponsorship of Yahoo fantasy sports contests, the NBA's newest investment allows the league to profit directly from the fantasy games themselves. However, the NBA's investment in FanDuel is not without legal risks. Here are seven legal risks that NBA attorneys now must manage as partners in FanDuel:

1. **Does FanDuel operate in any states where its contests are illegal?** Currently, FanDuel disallows participants from entering its games in five states where it perceives the risks as most elevated: Arizona, Louisiana, Iowa, Montana, and Washington. However, there are other states where daily fantasy sports contests also seem risky. For example, the State of Tennessee seems to disallow online contests that involve any chance. Meanwhile, the State of Kansas implies on its website that all fantasy sports contests with entry fees are illegal. To avoid potential liability, the NBA may wish for FanDuel to block entrants in additional states such as Kansas and Tennessee.

2. **Does FanDuel do enough to block users in these impermissible states?** The publicly traded sportsbook, the William Hill Co., recognizes that it is so strongly in its business interest that U.S.

residents do not access their website that they use Internet Protocol Tracking Technology to prevent those based in the U.S. from even getting to the website's front page. By contrast, it is possible to access at least FanDuel's main page from some impermissible states. Now with the NBA is a partner; FanDuel may wish to implement Internet Protocol Tracking Technology to block the entirety of its website from users in impermissible states–thus preventing any mistake or confusion.

3. Can minors play for money on FanDuel? Obviously FanDuel's terms of service prevent minors from entering, but few of the daily fantasy sports contests have found a way to truly prevent the practice if a minor has access to a family credit card or PayPal account. With the NBA's backing, it may be possible for FanDuel to come up with even more secure methods to ensure minors cannot access paid games. One possibility might involve borrowing some of the technologies currently utilized by the more reputable companies in other adult entertainment marketplaces. Alternatively, the NBA may wish to seek its own experts in developing and enhancing such technologies.

4. Can a FanDuel user who loses a lot of money successfully sue the NBA to recover it? Here, the risks are probably low given that at least one recent court ruling found that FanDuel was a website operator and not a gambling winner subject to disgorgement of winnings. However, if FanDuel were to change its gaming format to allow contests against the house instead of other players (much as the company BetAmerica currently does), this risk of

disgorgement would increase substantially. FanDuel has wisely stayed out of the "play to house" model so far. Presumably with the NBA's new backing it will continue to do so.

5. What happens when the first FanDuel user goes bankrupt? With any form of online gaming from traditional sports betting to the day-trading of stocks, it seems inevitable that a small segment of the participant base will suffer from a form of gambling addiction and ultimately lose a substantial amount of savings. While this may not lead to direct lawsuits, the publication of such outcome could hurt the image of the NBA. One of the challenges for the NBA will thus be a way to try to help develop gambling caps, and methods of ensuring those most at risk of a gambling addiction do not end up able to go bankrupt by playing in contests its "company" sponsors.

6. Is the NBA now perceived as endorsing adult content other than just online gaming? Now that the NBA is an "investor" in FanDuel, it is also an investor in a company that maintains contests sponsored by Playboy Magazine. Of course, there is a large segment of the U.S. population who loves "reading" Hugh Hefner's magazine as much as they love online gaming and sports. But, is it appropriate for the NBA to be involved in a business venture with a magazine that provides such adult content? Moreover, even if so, does the sponsorship conflict with the core identity that the NBA wishes to promote to its fans?

7. Does the NBA/FanDuel partnership increase the possibility of NBA games being fixed? The odds of NBA involvement in FanDuel leading to

game fixes seems remote, and perhaps the NBA's direct involvement in one of these games will better prepare the league to adopt policies to prevent such as result than if the NBA remained not involved. Yet, the NBA will still needs for its lawyers to craft reasonable policies about owner and employee participation in daily fantasy sports contests, as well as dissemination of information that could impact contest results.

To this ends, it will be important for the NBA to soon begin discussions with the National Basketball Players Association and other constituent groups on these matters. The league will also need more formal protocol for the disclosure of "insider information" such as unreported player injuries and rotational lineup changes.

Marc Edelman is an Associate Professor of Law at the City University of New York's Baruch College, Zicklin School of Business, where he has published more than 25 law review articles including "A Short Treatise on Fantasy Sports and the Law." He also provides legal and business consulting to numerous fantasy sports businesses. Nothing contained in this article should be construed as legal advice.

EXHIBIT C

Legalize and Regulate Sports Betting

NBA Commissioner Adam Silver: Allow Gambling on Pro Games

By ADAM SILVER NOV. 13, 2014

BETTING on professional sports is currently illegal in most of the United States outside of Nevada. I believe we need a different approach.

For more than two decades, the National Basketball Association has opposed the expansion of legal sports betting, as have the other major professional sports leagues in the United States. In 1992, the leagues supported the passage by Congress of the Professional and Amateur Sports Protection Act, or PASPA, which generally prohibits states from authorizing sports betting.

But despite legal restrictions, sports betting is widespread. It is a thriving underground business that operates free from regulation or oversight. Because there are few legal options available, those who wish to bet resort to illicit bookmaking operations and shady offshore websites. There is no solid data on the volume of illegal sports betting activity in the United States, but some estimate that nearly $400 billion is illegally wagered on sports each year.

Times have changed since PASPA was enacted. Gambling has increasingly become a popular and accepted form of entertainment in the United States.

Most states offer lotteries. Over half of them have legal casinos. Three have approved some form of Internet gambling, with others poised to follow.

There is an obvious appetite among sports fans for a safe and legal way to wager on professional sporting events. Mainstream media outlets regularly publish sports betting lines and point spreads. Voters in New Jersey overwhelmingly voiced their support for legal sports betting in a 2011 referendum. Gov. Chris Christie of New Jersey recently signed a bill authorizing sports betting at local casinos and horse racetracks, a law the NBA and other leagues have opposed—and a federal court has blocked—because it violates PASPA.

Outside of the United States, sports betting and other forms of gambling are popular, widely legal and subject to regulation. In England, for example, a sports bet can be placed on a smartphone, at a stadium kiosk or even using a television remote control.

In light of these domestic and global trends, the laws on sports betting should be changed. Congress should adopt a federal framework that allows states to authorize betting on professional sports, subject to strict regulatory requirements and technological safeguards.

These requirements would include: mandatory monitoring and reporting of unusual betting-line movements; a licensing protocol to ensure betting operators are legitimate; minimum-age verification measures; geo-blocking technology to ensure betting

is available only where it is legal; mechanisms to identify and exclude people with gambling problems; and education about responsible gaming.

Without a comprehensive federal solution, state measures such as New Jersey's recent initiative will be both unlawful and bad public policy.

Let me be clear: Any new approach must ensure the integrity of the game. One of my most important responsibilities as commissioner of the NBA is to protect the integrity of professional basketball and preserve public confidence in the league and our sport. I oppose any course of action that would compromise these objectives.

But I believe that sports betting should be brought out of the underground and into the sunlight where it can be appropriately monitored and regulated.

EXHIBIT D

Cuban: Silver 'exactly right' on sports betting

November 14, 2014 12:05 pm ET

In an op-ed in the *New York Times*, NBA commissioner Adam Silver argues that it is time to legalize sports betting. He has the full support of at least one influential owner.

"Adam has it exactly right," Dallas Mavericks owner Mark Cuban told CBSSports.com Friday.

The NBA and other major American sports leagues, along with the NCAA, have opposed a New Jersey law that would allow sports wagering at the state's racetracks and casinos. The law was struck down in federal court last month, but more appeals are expected.

The NBA's problem with that particular law is that it violates a federal statute that prohibits sports betting in all but four states: Nevada, Delaware, Montana and Oregon. Change the federal law, and you take what Silver describes as "a thriving underground business" and subject it to "strict regulatory requirements and technological safeguards."

In contrast to NFL commissioner Roger Goodell, who said earlier this year that he doesn't envision his league dropping its opposition to legalized sports betting, Silver argues that the illegal activity is happening anyway, to the tune of $400 billion annu-

ally. Leagues like the NBA, Silver says, should be involved in policing, regulating and monitoring the activity that thrives off their businesses.

"I believe that sports betting should be brought out of the underground and into the sunlight where it can be appropriately monitored and regulated," Silver said.

In an email exchange with CBSSports.com, Cuban said he believes Silver realizes that it's "hypocritical" of sports leagues to reward and endorse fantasy sports but oppose sports betting. Silver's op-ed was published online a day after the NBA announced a fantasy sports partnership with FanDuel, a CBS Sports sponsor.

"We all know leagues benefit from the interest in our leagues that [gambling and fantasy sports] create," Cuban said. "In the past for PR reasons, we have put up token resistance to them. I agree with Adam that now is the time to take sports betting out of the shadows and deal with it like the huge business it is."

After the Mavs' 53-point victory over the Tankadelphia [sic] 76ers on Thursday night, it's a safe bet that Cuban and Silver don't see eye-to-eye on draft lottery reform. Sports betting, on the other hand, is an issue they can agree on—in large part because both stand to make a lot more money as a result.

But how?

That's where a sports league advocating for legalized wagering on its enterprise gets tricky. If billlions [sic] of dollars change hands in an activity

that couldn't exist without pro sports competition, shouldn't the purveyors of that competition get a cut of the action?

And if so, wouldn't that make the sports leagues complicit in an activity that by its very nature poses a risk to the sanctity of competition, as in the 2007 Tim Donaghy scandal? Further, who's to say the government and leagues could regulate sports betting any better than the illegal bookmakers have for decades?

Silver's essay makes no mention of any potential financial stake that the NBA or any other sports league would have in legalized gambling. And maybe they wouldn't need one. Since the states and/or federal government presumably would tax the activity, maybe that would just give sports teams more kickbacks, tax breaks and public funds to tap into when they want you to pay for new stadiums and arenas to host the events that are generating all this new revenue.

It's a treacherous undertaking fraught with the potential for plenty of unintended consequences. Just remember something that even Silver would tell you: Never, ever take the Sixers and the points.

EXHIBIT E

Will Other Leagues Join NBA? Don't Bet on It

By KEN BELSON NOV. 14, 2014

There is no shortage of ways for fans to bet on sports, even though federal law forbids gambling on games in almost all states: Fantasy leagues, state-run lotteries and neighborhood bookies, as well as online offshore ones, will take a fan's action.

For decades, professional sports leagues have steadfastly opposed gambling and backed the prohibition of betting on games because they claimed it would undermine their sports' integrity and lead to questions about the honesty of players and referees.

But the leagues, eager for a slice of a multibillion-dollar moneymaker, have also tiptoed around their own opposition. NFL teams have licensing deals with state lotteries and have pushed to establish a franchise in London, where betting shops are ubiquitous.

Major League Baseball, the NBA and the N.H.L. all work with fantasy sports companies. This year, the Devils and the Philadelphia 76ers partnered with an online gambling company. Other teams are joining the trend.

NBA Commissioner Adam Silver went a lot further on Friday, however, when he became the first chief of a major American sports league to call for federal sports betting laws to be changed so states can allow betting on games. In an article on the Op-Ed

page of The New York Times, he acknowledged that despite laws prohibiting it, sports betting is a "thriving underground business that operates free from regulation or oversight."

Any expansion of sports gambling, he added, should be monitored, with reporting of unusual betting-line movements, verification that betting operators are legitimate and other measures to regulate activity.

Left unsaid was how much money the leagues and their owners stand to make. According to some estimates, the sports betting industry is worth more than $400 billion globally. Bookmakers typically take a 10 percent fee for handling a bet, and if the leagues take a slice of that, teams could receive millions of dollars more each year.

"If you're an owner of a team, it's a major revenue opportunity," said Jeffrey Standen, the dean of the Chase College of Law at Northern Kentucky University. "The pro sports leagues reap very little of what is produced off of sport gambling. The other shoe will one day drop."

To date, the NBA has partnered with other professional sports to oppose changes to the Professional and Amateur Sports Protection Act, known as PASPA, which outlawed sports betting in all but a few instances, and the leagues would all need to be persuaded to lobby the government to change or overturn the law. They have opposed efforts by Gov. Chris Christie to legalize sports gambling in New Jersey.

On Wednesday, however, the NBA announced that it took a stake in the daily fantasy sports site FanDuel, which allows players to play in money tournaments and bet among each other. That arrangement could be expanded. The league's spokesmen said the NBA would continue to oppose the New Jersey case because without a comprehensive federal framework, New Jersey's approach was "illegal as well as bad public policy."

On Friday, the other leagues stood firm in their defense of PASPA. Brian McCarthy, a spokesman for the NFL, said Silver's view "doesn't change our stance that has been articulated for decades: no gambling on NFL games."

Bill Daly, the deputy commissioner of the N.H.L., was more nuanced. "That was Adam's opinion, and certainly one he and the NBA are entitled to," Daly wrote in an email. "That does not mean we share it. I think there are several assertions he relies on that we might question, or certainly would want to test further, and there are other considerations not mentioned that we think are relevant. It is a complex issue and, at least from our perspective, one that does not lend itself easily to a simple 'agree' or 'disagree.'"

Those in the gambling industry, of course, are cheering Silver on. "We agree with Commissioner Silver that a legal and regulated sports betting industry, like we have in Nevada and elsewhere in the world, is the best way to protect the integrity of sporting events," said Joe Asher, the chief executive of William Hill US in Nevada.

Though any immediate shift in federal gambling laws is a long shot, leagues have in the past changed their views when money was involved. For years, leagues did not take money from liquor companies that wanted to advertise in arenas and stadiums. That opposition dissolved a few years ago when the recession constrained advertising.

Leagues that once opposed the scalping of tickets have done deals with Ticketmaster, StubHub and other online ticket marketplaces in the name of convenience and security for fans. The leagues have leapfrogged Slingbox, a service that allows fans to watch out-of-market games, by selling cable TV and Internet packages that show every game of every team.

Embracing gambling is different, though, because it may erode the moral authority of leagues, according to Jodi Balsam, a professor at Brooklyn Law School and a former lawyer for the NFL The growth of the Internet has made sports gambling far easier and has forced the leagues to protect the integrity of their sports by, for instance, publishing injury reports.

But encouraging consumers to gamble is a slippery slope for the leagues, Balsam said, because it will be harder for them to prohibit players from gambling.

"There is a morality tale here because once you endorse legalized sports gambling, it's harder to police your own employees and players," she said. "It's the moral authority of losing control."

For now, the leagues do what they can to grab a share of fans' growing interest in sports through fantasy sports, which are defined for legal purposes as games of skill, not luck, like gambling.

Major League Baseball has a partnership with DraftKings, which offers a daily contest on MLB.com in which prizes include tickets to games rather than cash. Robert Bowman, the chief executive of Major League Baseball Advanced Media, the league's Internet company, said it was exploring a larger partnership with DraftKings and did not rule out the possibility of cash tournaments or other formats in which money would be at stake.

The NFL's lobbyists, along with lobbyists from other professional leagues, successfully pushed to exempt fantasy sports from the Unlawful Internet Gambling Enforcement Act of 2006, which outlawed online poker and sports betting. The NFL also hosts season-long leagues on its website, provides fantasy analysis of players and winning strategies, and offers Fantasy Ultimate Experience Leagues, pay-to-enter contests that offer jerseys and memorabilia as prizes.

"We have spent a lot of time inside here and talking to other outside experts and have concluded these are games of skill and adhere to the federal law," Bowman said. "It keeps people interested in the games."

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THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION *et al.*,	**Civil Action No. 3:14-cv-06450 (MAS)**
Plaintiffs,	**Honorable Michael A. Shipp**
v.	Document Electronically Filed
CHRISTOPHER J. CHRISTIE, Governor of the State of New Jersey, *et al.*	
Defendants.	

STATEMENT OF INTEREST OF THE UNITED STATES

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INTRODUCTION

The United States of America, pursuant to 28 U.S.C. § 517, files this Statement of Interest with respect to the preliminary injunction motion presently before the Court.[1] The United States has an interest in the proper application of the Professional and Amateur Sports Wagering Act ("PASPA"). *See* 28 U.S.C. §§ 3701-04. And with respect to the pending proceedings, the United States submits that provisions of New Jersey law in effect following enactment of the 2014 Sports Wagering Act still conflict with PASPA's prohibitions. *See* 28 U.S.C. § 3702(1). In addition, the United States submits that sports wagering at Monmouth Park, which would be pursuant to state law, would violate PASPA. *See* 28 U.S.C. § 3702(2).

STATUTORY BACKGROUND

Enacted in 1992, PASPA sought to stop the spread of state-sanctioned sports gambling and to maintain the integrity of professional and amateur sports. *See* S. Rep. No. 102-248, at 4 (Nov. 26, 1991). Toward that end, PASPA contains two categories of prohibitions regarding any form of state-sanctioned sports wagering, which is defined to include "a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly (through the use

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[1] 28 U.S.C. § 517 provides that "any officer of the Department of Justice[] may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States . . . ."

of geographical references or otherwise), on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games." 28 U.S.C. § 3702. The first category of prohibitions applies to governmental entities, including States, and it makes it unlawful for those entities, "to sponsor, operate, advertise, promote, license, or authorize by law or compact" sports wagering. *See id.* § 3702(1). The second category of prohibitions applies to persons, making it unlawful for a person "to sponsor, operate, advertise, or promote" sports wagering pursuant to the law or compact of a governmental entity. *See id.* § 3702(2). To enforce these prohibitions, PASPA permits civil enforcement actions to be initiated by either the Attorney General of the United States or by any sports organization "whose competitive game is alleged to be the basis of such violation." *See id.* § 3703.[2]

FACTUAL BACKGROUND

New Jersey's recent efforts to establish state-sponsored sports gambling arise out of a 2011 statewide ballot initiative that amended the New Jersey Constitution with respect to sports wagering. The New Jersey Constitution contains a general prohibition of all gambling, subject to exceptions. *See* N.J. Const. art. IV, § VII, ¶ 2. Consistent with that constitutional limitation, New Jersey also has a general

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[2] PASPA contains exceptions to its prohibitions, see 28 U.S.C. § 3704(1)(a)-(d), and on the basis of those exceptions, four States have engaged in varying degrees of sports wagering. Those exceptions are not relevant here.

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statutory prohibition that "[a]ll wagers, bets or stakes made to depend upon any race or game, or upon any gaming by lot or chance, or upon any lot, chance, casualty, or unknown or contingent event, shall be unlawful." N.J. Stat. Ann. § 2A:40-1. New Jersey also criminalizes the promotion of gambling. *See id.* § 2C:37-1. Through the 2011 amendments, however, New Jersey altered its Constitution to create exceptions for certain sports wagering at casinos and racetracks, by enabling the Legislature "to authorize by law" sports wagering at those locations. *See* N.J. Const. art. IV, § VII, ¶¶ 2(D), (F). In light of the amendments, New Jersey has undertaken three recent efforts to permit sports wagering at casinos and racetracks.

The first effort was the enactment of the 2012 Sports Wagering Act. *See* 2011 N.J. Sess. Law Serv. Ch. 231 (Jan. 17, 2012). That act created an exception to the pre-existing statutory prohibitions to permit sports wagering in casinos and racetracks. Five sports organizations[3] sued to enjoin the operation of the 2012 Sports Wagering Act and to prevent New Jersey from violating PASPA. As "a purported authorization by law of sports wagering," the 2012 Act was "precisely what PASPA says states may not do." *See NCAA v. Governor of New Jersey*, 730 F.3d 208, 227 (3d Cir. 2013). Rather than dispute PASPA's applicability to

[3] Those sports organizations consisted of one amateur sports league, the National Collegiate Athletic Association, and four professional sports leagues, the National Basketball Association, the National Football League, the National Hockey League, and the Office of the Commissioner of Baseball.

the 2012 Sports Wagering Act, New Jersey and the defendant-intervenors in that case[4] instead challenged PASPA's constitutionality in several respects. Specifically, they argued that PASPA violated the anti-commandeering doctrine under the Tenth Amendment, equal sovereignty principles, and the Commerce Clause. The United States intervened in the litigation to defend the constitutionality of PASPA.

Each of those constitutional challenges failed. This Court upheld PASPA's constitutionality and permanently enjoined state officials from violating PASPA. *See NCAA v. Christie*, 926 F. Supp. 2d 551, 579 (D.N.J. 2013). On appeal, the Third Circuit upheld PASPA's constitutionality and affirmed the District Court's decision. *See NCAA v. Governor of New Jersey*, 730 F.3d at 240-41. The Supreme Court denied petitions for writs of certiorari to review the Third Circuit's decision. *See Christie v. NCAA*, 134 S. Ct. 2866 (June 23, 2014).

Following the denial of the certiorari petitions, New Jersey commenced its second effort to implement sports wagering through Law Enforcement Directive 2014-1 (the "Directive"), issued on September 8, 2014, by the Acting Attorney General for New Jersey. In the Directive, the New Jersey Attorney General expressed his opinion that "PASPA does not prohibit States from repealing state-law prohibitions on sports wagering."

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[4] Those intervening defendants were the New Jersey Thoroughbred Horsemen's Association, Inc., New Jersey State Senator Stephen M. Sweeney, and New Jersey Assembly Speaker Sheila Y. Oliver.

Directive at 4. Consistent with that legal perspective, the New Jersey Attorney General directed law enforcement and prosecuting agencies to abide by that interpretation to ensure that casinos and racetracks could operate sports pools. *See id.* at 5.

On the same date as the issuance of the Directive, state officials filed a motion requesting that the District Court make clear that the Directive did not violate the permanent injunction. The United States and the sports organizations opposed that motion and explained that the Directive rested on a flawed theory of severability and that it violated PASPA's authorization-by-law and licensing prohibitions. In the course of briefing those issues, casinos and racetracks in New Jersey agreed to a moratorium whereby no sports wagering would take place until after October 25, 2014. The New Jersey defendants requested two extensions of time to reply to the oppositions to its motion, with the final due date being October 17, 2014. Instead of replying to the motions on that date, New Jersey withdrew its motion based on the enactment of the 2014 Sports Wagering Act earlier that day.

The 2014 Act is New Jersey's third effort to permit sports wagering at its racetracks and casinos, and it is the subject of this action. The 2014 Act purports to repeal any statutory or regulatory provisions of New Jersey law with respect to sports wagering at casinos and racetracks. To that end, the 2014 Act repeals the 2012 Sports Wagering Act in its entirety (thus mooting the Directive) and also eliminates any statutory or regulatory provisions permitting any

state agency to license, authorize, permit, or otherwise take action to allow any person to engage in sports wagering to the extent that those laws apply to casinos and racetracks. The 2014 Act also eliminates prohibitions on sports wagering at casinos and racetracks by repealing the statutes that make sports wagering unlawful and criminal to the extent that those statutes apply to wagering at casinos and racetracks. In sum, the 2014 Act seeks to repeal any statute, regulation, or rule – either a permission or a prohibition – regarding sports wagering at casinos and racetracks, leaving New Jersey with no statutory or regulatory provisions whatsoever in that regard. However, New Jersey's long-standing prohibitions on sports wagering would remain in full effect everywhere else in the State. And New Jersey's regime for licensing casinos and racetracks – the very entities that would be permitted to conduct gaming operations under the State's plan – likewise remains in effect. In reliance on the 2014 Act, one racetrack, Monmouth Park, sought to commence sports wagering operations on October 26, 2014 (the day after the moratorium's expiration).

Those developments prompted the sports organizations to file this action against New Jersey, Monmouth Park, and the New Jersey Sports and Exhibition Authority, primarily on the ground that the 2014 Act violates PASPA. As part of that litigation, the sports organizations filed a motion for a temporary restraining order ("TRO") and a preliminary injunction to prevent the commencement of sports wagering. The parties briefed the application for a TRO between October 21 and October 24, 2014. On October 25, 2014, the Court granted the requested TRO, which

prevented the commencement of any sports wagering at Monmouth Park. As part of its order, the Court required the sports organizations to post a bond of $3.4 million (which the sports organizations have done), and the Court set a briefing schedule for the preliminary injunction determination before the TRO expires on November 21, 2014.

STANDARD OF REVIEW

In the absence of statutory guidance from Congress, a court typically evaluates a request for injunctive relief through consideration of four factors:

1. whether the movant has shown a reasonable probability of success on the merits;

2. whether the movant will be irreparably injured by denial of the relief;

3. whether granting preliminary relief will result in even greater harm to the nonmoving party; and

4. whether granting preliminary relief will be in the public interest.

Crissman v. Dover Downs Entm't Inc., 239 F.3d 357, 364 (3d Cir. 2001); *see also Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

Section 3703 of PASPA, however, is a statutory injunction provision. Through that section, Congress expressly permitted a civil action to enjoin PASPA violations:

> A civil action to enjoin a violation of section 3702 may be commenced in an appropriate district court of the United States by the Attorney General of the United States, or by a professional sports organization or amateur sports organization whose competitive game is alleged to be the basis of such violation.

28 U.S.C. § 3703. Under that formulation, Congress already has determined that an injunction is appropriate for violations of PASPA. Rather than permit any injured person to sue for a violation of PASPA, Congress specified only two entities that may sue for such an injunction (the United States and sports organizations whose competitive games are alleged to be the basis of a PASPA violation). When one of those two entities seeks an injunction for a violation of PASPA, it need show only a reasonable likelihood of a future violation of one of PASPA's prohibitions, and need not make an independent showing of injury. *See, e.g.*, *United States v. Richlyn Labs., Inc.*, 827 F. Supp. 1145, 1150 (E.D. Pa. 1992); *United States v. Toys "R" Us*, 754 F. Supp. 1050, 1053 (D.N.J. 1991); *RezMed Recovery Care Ctrs. v. Twp. of Willistown*, 36 F. Supp. 2d 676, 687 (E.D. Pa. 1999).

This is so because PASPA reflects a considered congressional judgment that state sponsored sports wagering should not occur – as reflected in the clear language of § 3702 and the absence of any applicable exception to Congress's ban. PASPA creates a situation similar to *TVA v. Hill*, 437 U.S. 153, 193-195 (1978), in which it was established that courts should not second-guess Congress's considered judgment by declining to enforce the statute. Also, PASPA does not

provide a general, open-ended grant of authority to a court to grant injunctive relief in a wide range of situations. It is focused on specifically identified conduct, which reinforces the view that Congress has balanced the competing considerations in this context. Furthermore, PASPA presents a situation in which injunctive relief is the only remedy – there are no criminal sanctions or civil penalties. *See United States v. Oakland Cannabis Buyers' Cooperative*, 532 U.S. 483, 496-497 (2001). That Congress also gave sports organizations a right to sue further substantiates the conclusion that the perceived threat to the integrity of their games was a sufficient basis for relief. Finally, this is not a situation where there are countervailing public interests deriving from other federal statutes or programs of substantial importance, such as the Navy training at issue in *Winter v. Natural Resources Defense Council*, 555 U.S. 7, 21-31 (2008). Instead, through PASPA, Congress sought to stop the spread of state-sanctioned sports gambling and to maintain the integrity of professional and amateur sports. *See* S. Rep. No. 102—248, at 4 (1991). Given PASPA's substantive and injunctive provisions, then, a court in equity cannot "ignore the judgment of Congress, deliberately expressed in legislation." *Va. Ry. Co. v. Sys. Fed. No. 40*, 300 U.S. 515, 551 (1937).

DISCUSSION

The United States submits that New Jersey's regime in effect in the wake of the 2014 Sports Wagering Act continues to conflict with PASPA, and that Monmouth Park's effort to permit sports betting pursuant to state law does so as well. Under these circumstances, and in light of the standard of review for

PASPA's statutory injunction provision, the requirements for an injunction under PASPA are satisfied.

I. THE 2014 SPORTS WAGERING ACT DOES NOT BRING NEW JERSEY LAW INTO COMPLIANCE WITH PASPA

Defendants contend that due to the 2014 Act, sports wagering at casinos and racetracks in New Jersey would be permitted under PASPA. That argument is based on the view that any type of legal regime in effect following a partial repeal of New Jersey's statutory sports wagering prohibitions would be permissible under PASPA. *See* 2014 Act, Statement. But that assumption is incorrect: although PASPA does not require New Jersey to maintain any sports wagering prohibition, it nonetheless remains unlawful under PASPA for New Jersey to license sports wagering or authorize it by law. *See* 28 U.S.C. § 3702(2); *NCAA v. Governor of New Jersey*, 730 F.3d at 232 (explaining that PASPA prohibits "the issuances of gambling 'license[s]' or the affirmative 'authorization *by law*' of gambling schemes" (alternations and emphasis in original)). Here, notwithstanding the 2014 Sports Wagering Act's repeal of aspects of New Jersey law on sports betting, the Act leaves in place licensing requirements that effectively permit sports wagering and constitutes an impermissible authorization by law.

Most fundamentally, the 2014 Act fails to bring New Jersey law into compliance with PASPA's licensing prohibition. The 2014 Sports Wagering Act repeals New Jersey's prohibitions on sports wagering as

applied to casinos and racetracks. But under New Jersey law, casinos and racetracks must be licensed. *See, e.g.*, N.J. Const. art. IV, § VII, ¶ 2(D), "It shall be lawful for the Legislature to authorize by law the establishment and operation, *under regulation and control by the State*, of gambling houses or casinos within the boundaries, as heretofore established, of the city of Atlantic City, county of Atlantic, and *to license* and tax such operations and equipment used in connection therewith." (emphasis added); N.J. Stat. Ann. § 5:12-96 (requiring a license for casinos); N.J. Stat. Ann. § 5:5-50 (requiring a permit for racetracks with wagering on horse racing). By lifting its prohibition on sports wagering for only those locations – casinos and racetracks – which must be licensed, the 2014 Act does not alter the result that sports wagering is confined to entities that have received a license. Yet such a licensing provision for sports wagering is plainly prohibited by PASPA. *See* 28 U.S.C. § 3702(1).

In addition, assuming that the 2014 Act is permissible under the New Jersey Constitution, it would also run afoul of PASPA's prohibition against an authorization by law of sports wagering. The New Jersey Constitution prohibits all gambling, subject to exceptions. *See* N.J. Const. art. IV, § VII, ¶ 2. That general prohibition has exceptions that allow sports gambling at casinos and racetracks when *authorized by law* by the Legislature. *See* N.J. Const. art. IV, § VII, ¶¶ 2(D), (F). Under the ordinary meaning of the term "authorize by law" in the New Jersey Constitution, gambling

is legal only if expressly permitted by the Legislature.[5] *See NCAA v. Governor of New Jersey*, 730 F.3d at 232. Accordingly, if the 2014 Act allows sports wagering at licensed casinos and racetracks through anything other than an express permission, then it would apparently violate the New Jersey Constitution, but on that question of state law, the United States does not have a direct interest. Rather, the United States' interest arises if the 2014 Act is interpreted as an authorization by law, *i.e.*, an express permission for sports wagering at licensed casinos and racetracks under state law.[6] In that instance, the United States' interests are implicated because PASPA prohibits the authorization by law of sports wagering. *See* 28 U.S.C. § 3702(1). Accordingly, to the extent that it is consistent with the New Jersey Constitution and amounts to an authorization by law (an express permission), the 2014 Act is prohibited by PASPA.

Finally, in addition to its prohibitions pertaining to governmental entities, PASPA prohibits any person from conducting a sports wagering operation pursuant to the law or compact of any governmental entity. *See* 28 U.S.C. § 3702(2). As applied here, Monmouth Park seeks to operate a sports pool pursuant to

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[5] The Third Circuit previously viewed the term "authorize by law" consistently as it is used in the New Jersey Constitution and in PASPA by analyzing both contexts and concluding that "authorize by law" is different than "authorize." *NCAA v. Governor of New Jersey*, 730 F.3d at 232.

[6] Under New Jersey law, if legislation can be interpreted consistently with the State Constitution, it should be given that meaning. *See Gallenthin Realty Dev., Inc. v. Borough of Paulsboro*, 924 A.2d 447, 457 (N.J. 2007); *State v. Miller*, 790 A.2d 144, 153-54 (N.J. 2002).

state law as in effect following the enactment of the 2014 Sports Wagering Act, which as explained above, constitutes a licensing of sports wagering within the meaning of PASPA. Because any sports wagering at Monmouth Park is pursuant to state law, it thus is prohibited by
§ 3702(2).

II. THE UNITED STATES' PREVIOUSLY EXPRESSED VIEWS REGARDING PASPA DO NOT MEAN THAT NEW JERSEY LAW IS PRESENTLY COMPLIANT WITH PASPA

Defendants mistakenly rely on out-of-context statements by the United States in support of their position with respect to effect of the 2014 Sports Wagering Act. *See, e.g.*, Mem. in Opp. by New Jersey Defs., ECF No. 44 at 4, 7, 13 n.2 (Nov. 3, 2014); Mem. in Opp. by NJTHA, ECF No. 42 at 12-14 (Nov. 3, 2014). In the prior litigation regarding the 2012 Sports Wagering Act, the United States made clear that PASPA does not require the maintenance of sports wagering prohibitions and that "the bare repeal" of New Jersey's sports wagering prohibitions would not offend the authorize-by-law prohibition in PASPA. *See NCAA v. Christie*, Nos. 13-1713, -1714, -1715, Br. for Appellee the United States at 30
(3d Cir. June 7, 2013) (copy available at ECF No. 21-5).[7] But those statements must be read in their full

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[7] Other related statements by the United States include the following:

context, as well as in the full context of New Jersey law. In making those statements, the United States did not advocate that *any* partial repeal of statutory prohibitions on sports betting would result in a state legal regime that would be consistent with PASPA. Rather, following any repeal, it would be necessary to evaluate *all* New Jersey law – including the constitutional requirements – to determine whether New Jersey continues to license or authorize by law sports betting. Thus, the United States was simply refuting the contention that PASPA required New Jersey to maintain a complete ban on sports wagering. That, of course, does not mean that PASPA permits New Jersey to license or authorize by law sports wagering

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- At page 11 of the United States' Opposition to Certiorari in the Supreme Court: "PASPA does not even obligate New Jersey to leave in place the state law prohibitions against sports gambling that it had chosen to adopt prior to PASPA's enactment. To the contrary, New Jersey is free to repeal those prohibitions in whole or in part." *Christie v. NCAA*, Nos. 13-967, -979, & -980, Br. for the United States at 11 (May 2014) (available at http://www.justice.gov/sites/default/files/osg/briefs/2013/01/01/2013-0967.resp.pdf.)

- On page 28 of the appellate brief for the United States in the Third Circuit: "Nothing in the statute requires New Jersey to maintain or enforce its sports wagering prohibitions." *NCAA v. Governor of New Jersey*, Nos. 13-1713, -1714, -1715, Br. for Appellee the United States at 28 (3d Cir. June 7, 2013) (copy available at ECF No. 21-6).

- At pages 68 and 69 of the transcript of the United States' oral argument in the Third Circuit: "It is up to the State of New Jersey to determine for itself the extent to which it will or will not enforce the law." *NCAA v. Governor of New Jersey*, Nos. 13-1713, -1714, -1715, Oral Argument Transcript at 68-69 (3d Cir. June 26, 2013) (copy available at ECF No. 21-5).

simply by effectuating those outcomes by making selective exceptions from existing laws with respect to casinos and racetracks. In short, the selective repeal of sports wagering prohibitions does not mean that the remaining provisions of state law comply with PASPA. That is particularly so here with respect to licensing, where even after the 2014 Act, sports betting is permitted under New Jersey law only at licensed locations.

CONCLUSION

For the foregoing reasons, the 2014 Sports Wagering Act does not remedy the pre-existing reasons why New Jersey law runs afoul of PASPA. Moreover, because sports wagering at Monmouth Park would be pursuant to state law, it is prohibited by PASPA.

November 19, 2014 Respectfully Submitted,

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November 20, 2014

BY ECF

Hon. Michael A. Shipp, U.S.D.J.
U.S. District Court for the District of New Jersey
Clarkson S. Fisher Building and U.S. Courthouse
402 East State Street
Trenton, NJ 08608

RE: National Collegiate Athletic Association, et al. v.
Christopher J. Christie, et al.,
C.A. No. 3:14-cv-6450 (MAS)(LHG)

Dear Judge Shipp:

We represent Defendant New Jersey Thoroughbred Horsemen's Association, Inc. ("NJTHA") in the above-referenced action. Yesterday, Your Honor entered a Text Order advising the parties that "the Court shall consolidate Plaintiffs' application for a preliminary injunction with a decision on the merits through summary judgment" (D.E. 56). On behalf of

the NJTHA, for the reasons set forth in our letter to Your Honor, dated November 17, 2014 (D.E. 53), we respectfully object to the consolidation referred to in Your Honor's Text Order.

In light of the consolidation referred to in Your Honor's Text Order, we hereby incorporate the Statements of Undisputed Material Facts submitted by the State Defendants (D.E. 52-1) and Defendant NJSEA (D.E. 60). We also incorporate by reference the NJTHA's Statement of Undisputed Facts that was filed in *Christie I* (D.E. 110-1 in 3:12-cv-04947). Finally, we incorporate by reference the factual statements contained in the certifications of Dennis A. Drazin (D.E. 21-11), Michael Musto (D.E. 21-9), Robert J. Kulina (D.E. 21-10), and Ronald J. Riccio (D.E. 21-1, 42-1, 53-1) submitted by the NJTHA in this action.

Respectfully submitted,

MCELROY, DEUTSCH, MULVANEY & CARPENTER, LLP

/s/ Ronald J. Riccio
Ronald J. Riccio

cc: Counsel of Record

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, et al., Plaintiffs, v. CHRISTOPHER J. CHRISTIE, et al., Defendants.	Civil Action No. 14-6450 (MAS) (LHG)
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, et al., Plaintiffs, v. CHRISTOPHER J. CHRISTIE, et al., Defendants.	Civil Action No. 12-4947 (MAS) (LHG) **ORDER**

THIS MATTER having been brought before the Court by McCarter & English, LLP, Skadden, Arps, Slate, Meagher & Flom LLP, and Bancroft PLLC, attorneys for Plaintiffs National Collegiate Athletic Association, National Basketball Association, National Football League, National Hockey League, and Office of the Commissioner of Baseball, doing business as

Major League Baseball (collectively "Plaintiffs"), seeking a Preliminary Injunction, and the Court having considered parties' submissions and arguments; and the Court having consolidated Plaintiff's application for a preliminary injunction with a decision on the merits through a *sua sponte* summary judgment decision; and for the reasons stated in the Opinion filed on this date; and for other good cause shown,

IT IS on this 21st day of November, 2014, **ORDERED** that:

1. Plaintiffs' Application for a Preliminary Injunction (12-4947, ECF No. 174; 14- 6450, ECF No. 12) is **TERMINATED** as moot.

2. Summary Judgment is **GRANTED** to Plaintiffs on Count One of the Complaint (14-6450, ECF No. 1).

3. Counts Two, Three, and Four of the Complaint (14-6450, ECF No. 1) are **DISMISSED**.

4. Plaintiffs' request for a permanent injunction is **GRANTED**, and the State Defendants are permanently enjoined from violating the Professional and Amateur Sports Protection Act, 28 U.S.C. §§ 3701-3704, by giving operation or effect to N.J. Stat. Ann. §§ 5:12A-7 to -9 (2014) in its entirety.

s/ Michael A. Shipp
MICHAEL A. SHIPP
UNITED STATES DISTRICT JUDGE

Nos. 14-4546, 14-4568, 14-4569

IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, et al.,
Plaintiffs-Appellees v.

GOVERNOR OF THE STATE OF NEW JERSEY et al.
Defendants-Appellants

On Appeal from the United States District Court for the District of New Jersey

BRIEF FOR THE UNITED STATES OF AMERICA AS AMICUS CURIAE IN SUPPORT OF APPELLEES

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Nos. 14-4546, 14-4568, 14-4569

IN THE UNITED STATES COURT OF APPEALS
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GOVERNOR OF THE STATE OF NEW JERSEY, et al.
Defendants-Appellants

On Appeal from the United States District Court for the District of New Jersey

BRIEF FOR THE UNITED STATES OF AMERICA AS AMICUS CURIAE IN SUPPORT OF APPELLEES

INTEREST OF THE UNITED STATES

Pursuant to 28 U.S.C. § 517 and Rule 29(a) of the Federal Rules of Appellate Procedure, the United States submits this brief as amicus curiae to address the proper construction and application of the Professional and Amateur Sports Protection Act ("PASPA" 28 U.S.C. §§ 3701-04, in the context of this case. The United States has an interest in ensuring that PASPA is construed and applied in a manner that is consistent with Congress's goal of preventing the expansion of state-sanctioned sports gambling. In *NCAA v. Governor of New Jersey*, 730 F.3d 208, 227 (3d Cir. 2013) ("*Christie I*"), this Court held that New Jersey

's

recently passed laws relating to sports gambling conflicted with PASPA's prohibition against "sponsor[ing], operat[ing], advertis[ing], promot[ing], licens[ing], or authoriz[ing] by law or compact" sports gambling. For the reasons set forth below, the United States believes that the 2014 New Jersey legislation that amended New Jersey's existing laws regarding sports gambling does not eliminate the conflict between New Jersey law and PASPA.

STATEMENT OF ISSUES

Whether the laws of New Jersey relating to sports gambling, as amended by New Jersey Senate Bill 2460 (the "2014 Act"), conflict with PASPA's prohibition against "licensing" sports gambling and "authorizing" sports gambling "by law."

STATEMENT OF THE CASE

1. Congress enacted PASPA in 1992 to stop the spread of state-sanctioned sports gambling and to maintain the integrity of professional and amateur sports. *See* S. Rep. No. 102-248, at 4 (Nov. 26, 1991). Toward that end, PASPA generally prohibits state-sanctioned sports wagering, which is defined to include any "betting, gambling, or wagering scheme based, directly or indirectly ... on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games." 28 U.S.C. § 3702. Under PASPA, "governmental entities," including states, may not "sponsor, operate, ad-

vertise, promote, license, or authorize by law or compact" sports wagering. *See id.* § 3702(1). In addition, PASPA makes it unlawful for persons "to sponsor, operate, advertise, or promote" sports wagering pursuant to the law or compact of a governmental entity. *See id.* § 3702(2). PASPA's prohibitions may be enforced through civil actions for injunctive relief brought by either the Attorney General of the United States or by any sports organization "whose competitive game is alleged to be the basis of such violation." *See id.* § 3703.

2. Since 2012, the New Jersey legislature has been seeking to introduce sports gambling at the state's casinos and racetracks. The legislation that gave rise to the present suit, New Jersey Senate Bill 2460 (the "2014 Act"), is the latest in a series of legislative enactments designed to accomplish that goal.

Prior to 2012, New Jersey prohibited wagering on all sporting events other than horse racing, as part of the state's general prohibitions on gambling. *See* N.J. Const. art. IV, § VII (with specified exceptions, "[n]o gambling of any kind shall be authorized by the Legislature" without the approval of voters); N.J. Stat. Ann. § 2A:40-1 ("[a]ll wagers, bets or stakes made to depend upon any race or game, or upon any gaming by lot or chance, or upon any lot, chance, casualty, or unknown or contingent event, shall be unlawful"); *id.* § 2C:37-1 (prohibiting promotion of gambling). However, following a statewide ballot initiative in 2011, the New Jersey Constitution was amended to create an exception for sports wagering. Using the same language as PASPA, the constitutional amendment empowered the New Jersey Legislature to "authorize by

law" sports wagering at casinos and racetracks. *See* N.J. Const. art. IV, § VII, ¶¶ 2(D), (F). The power conferred upon the legislature is qualified in one respect: the legislature may not authorize wagering "on a college sport or athletic event that takes place in New Jersey or on a sport or athletic event in which any New Jersey college team participates regardless of where the event takes place." *Id.*

Acting pursuant to that constitutional amendment, New Jersey enacted the 2012 Sports Wagering Act (the "2012 Act"), which provided for regulated sports wagering at the state's casinos and racetracks. *See* 2011 N.J. Sess. Law Serv. Ch. 231 (Jan. 17, 2012); *Christie I*, 730 F.3d at 217. The nation's principal professional sports leagues and the NCAA sued state officials in the District of New Jersey to enjoin the operation of the 2012 Act. *See NCAA v. Christie*, 926 F. Supp. 2d 551, 579 (D.N.J. 2013). In that litigation, the state defendants did not dispute that the 2012 legislation conflicted with PASPA; instead they attacked PASPA's constitutionality. In response, the United States intervened to defend the constitutionality of PASPA.

The district court rejected each of the constitutional challenges to PASPA and enjoined the defendants from implementing the 2012 Act. On appeal, this Court affirmed the district court's injunction. The Court explained that as "a purported authorization by law of sports wagering," the 2012 Act was "precisely what PASPA says the states may not do." *Christie I*, 730 F.3d at 227; *see also id.* at 240-41. The Court rejected the defendants' constitutional claims, including

their claim that PASPA violates the anti-commandeering principles of the Tenth Amendment. In the course of its Tenth Amendment analysis, the Court explained that while PASPA precludes the states from "authorizing [sports gambling] by law," PASPA does not preclude a state from repealing its existing prohibitions against sports gambling. *See id.* at 232-33. Following this Court's decision, the Supreme Court denied the defendants' petitions for a writ of certiorari in June 2014. *See Christie v. NCAA*, 134 S. Ct. 2866 (2014).

3. Immediately after the Supreme Court denied review of this Court's decision, the New Jersey Legislature passed Senate Bill 2250, which provided that "[a]ll prohibitions ... against wagering on the results of any professional, college, or amateur sport or athletic event, are partially repealed to the extent they would apply to such wagering at casinos or gambling houses in Atlantic City or at current running and harness horse racetracks in this State." N.J. S. No. 2250 (June 23, 2014). The Governor of New Jersey vetoed that bill. In his veto statement, he explained that the bill, which "partially deregulates betting at casinos and racetracks," was "an effort to sidestep federal law." Christie Statement at 2 (available online at http://www.njleg.state.nj.us/2014/Bills/S2500/2250_V1.HTM). Because he was unable to ignore federal law, the Governor stated, "I cannot sign this bill." *Id.*

On October 17, 2014, New Jersey enacted Senate Bill 2460 (the "2014 Act"), which is the subject of this litigation. The 2014 Act repeals the 2012 Act that was invalidated by this Court in *Christie I*. 2014 Act § 5.

At the same time, the 2014 Act partially repeals the provisions of the New Jersey statutes that prohibit gambling activities and the provisions that regulate gambling at racetracks and casinos. *Id.* § 1. In addition, the 2014 Act partially repeals "any rules and regulations that may require or authorize any State Agency to license, authorize, permit, or otherwise take action to allow any person to engage" in sports gambling. *Id.*

The 2014 Act repeals the foregoing statutory provisions and regulations "to the extent [that] they apply ... at a casino or gambling house ... or a running or harness horse racetrack" to "the placement or acceptance of wagers [on sporting events] ... by [adults who are] situated at such location," or to "the operation of a wagering pool that accepts such wagers from [adults who are] situated at such location." 2014 Act § 1. As a result, casino and racetrack operators are now permitted to conduct sports gambling operations on their premises. Other persons may conduct sports gambling at casinos and racetracks only if "the operator of the casino, gambling house, or running or harness horse racetrack consents to the wagering or operation." *Id.* However, New Jersey's long-standing prohibitions on sports wagering remain in effect everywhere except casinos and racetracks, and continue to prohibit sports gambling by persons, other than the operator, who have not obtained the operator's consent. In addition, New Jersey's laws requiring the licensing of the operators of casinos and racetracks–the entities that are permitted to conduct gaming operations under the 2014 Act, and whose consent is required for any other persons to conduct sports gambling operations at those locations–likewise remain in

effect. *See*, e.g., N.J. Const. art. IV, § VII, ¶ 2(D), ("It shall be lawful for the Legislature to authorize by law the establishment and operation, *under regulation and control by the State*, of gambling houses or casinos within the boundaries, as heretofore established, of the city of Atlantic City, county of Atlantic, and to license and tax such operations and equipment used in connection therewith." (emphasis added)); N.J. Stat. Ann. § 5:12-96 (requiring a license for casinos); N.J. Stat. Ann. § 5:5-50 (requiring a permit for racetracks with wagering on horse racing).

4. Before any sports wagering commenced under the authority of the 2014 Act, the sports organizations that litigated *Christie I* initiated a civil action under PASPA to enjoin the 2014 Act and persons seeking to engage in sports wagering pursuant to the 2014 Act. In November 2014, the district court entered summary judgment in favor of the sports organizations and issued a permanent injunction against the implementation of the 2014 Act.

The district court held that the 2014 Act is preempted by PASPA. *See* Op. at 15 (A19). The court acknowledged that, as construed in *Christie I*, PASPA does not bar a state from repealing its laws against sports gambling. However, the court interpreted *Christie I* to confine a state to repealing its anti-sports gambling laws in their entirety. *See id.* at 18-20 (A22-24). The court held that a partial repeal, in contrast to a complete repeal, amounts to authorizing by law the gambling that comes within the scope of the repealing legislation, and thereby runs afoul of the prohibition on "authorizing [sports gambling] by law" in

28 U.S.C. § 3702(1). *See id.* at 22-27 (A26-31). As interpreted by the district court, PASPA leaves a state with a binary choice between maintaining its existing prohibitions on sports wagering in full or to repealing them completely. *See id.* at 18-20 (A22-24). Because the 2014 Act leaves the state's general prohibitions against sports gambling intact except insofar as the Act repeals them with respect to casinos and racetracks, the court held that it is preempted by PASPA. *See id.* at 29 (A31).

SUMMARY OF THE ARGUMENT

Although the 2014 Act seeks to take advantage of this Court's holding in *Christie I* that PASPA does not prohibit a state from repealing its laws against sports gambling, the Act fails to bring New Jersey law into conformity with PASPA. As modified by the 2014 Act, New Jersey law violates two of PASPA's prohibitions: the prohibition on licensing sports gambling and the prohibition on authorizing sports gambling by law.

The licensing prohibition is transgressed because the 2014 Act permits sports wagering only at facilities that are licensed to conduct gambling–the casinos of Atlantic City and the state's race tracks. Framing the 2014 Act in terms of venues rather than entities does not alter the result under PASPA when the only persons who may conduct sports betting at those locations are the licensed operators of the casinos and racetracks and persons whom they permit to act in their stead.

New Jersey law also conflicts with PASPA's "authorize by law" prohibition. The United States does not share the district court's view that anything short of complete repeal of a state's prohibitions on sports

gambling constitutes *ipso facto* authorization by law. But it does not follow that a state may insulate every change in its sports betting laws from the operation of PASPA simply by casting the change in the language of repeal. In this case, New Jersey is effectively authorizing sports betting by law by structuring its "partial repeal" to encourage sports betting at preferred venues as a tool of state economic development. Moreover, because the New Jersey Constitution permits sports wagering only if the legislature "authorize[s] by law" the wagering, and because PASPA preempts state sports gambling legislation that "authorizes by law," New Jersey cannot repeal its restrictions on sports betting in a manner consistent with the state Constitution without running afoul of PASPA.

ARGUMENT

THE 2014 ACT DOES NOT ELIMINATE THE CONFLICT BETWEEN NEW JERSEY'S SPORTS GAMBLING LAWS AND PASPA

I. New Jersey Is Engaged In The Licensing Of Sports Gambling

Prior to the enactment of the 2014 Act, this Court held in *Christie I* that New Jersey's laws relating to sports gambling conflicted with PASPA. The central question presented by this appeal is whether the 2014 Act eliminates that conflict. In the view of the United States, it does not. Although PASPA permits states to repeal prohibitions on sports gambling, it does not permit them to engage in the licensing of sports gambling activities. And New Jersey law, as revised by

the 2014 Act, operates as a licensing scheme for sports gambling.

The 2014 Act establishes a licensing requirement for sports wagering by confining the repeal of the state's laws against sports gambling to licensed gambling facilities. S. 2460, § 1. The 2014 Act repeals New Jersey's prohibitions on sports wagering only "to the extent they apply or may be construed to apply at a casino or gambling house operating in this State in Atlantic City or a running or harness horse racetrack in this State ..." *Id.* Under New Jersey law, the operators of casinos and racetracks must hold state gambling licenses. *See*, e.g., N.J. Const. art. IV, § VII, ¶ 2(D), ("It shall be lawful for the Legislature to authorize by law the establishment and operation, under regulation and control by the State, of gambling houses or casinos within the boundaries, as heretofore established, of the city of Atlantic City, county of Atlantic, and to license and tax such operations and equipment used in connection therewith." (emphasis added)); N.J. Stat. Ann. § 5:12-96 (requiring a license for casinos); N.J. Stat. Ann. § 5:5-50 (requiring a permit for racetracks with wagering on horse racing). By confining the operation of the 2014 Act to facilities that are operated pursuant to gambling licenses, New Jersey is engaged in licensing under the guise of repeal. New Jersey law thus conflicts with the prohibition on "licensing" sports gambling in 28 U.S.C. § 3702(1).

Appellants argue that the New Jersey law does not run afoul of PASPA's licensing prohibition because the licenses held by casinos and racetracks are not for sports wagering but are for either casino gambling or

horseracing. *See* N.J. Br. at 43-44. That is a distinction without a difference. When a state issues a license to engage in particular activities, then enacts a law that allows the license holder to engage in additional (and closely related) activities, it has done nothing more than legislatively enlarge the terms of the existing license. That is what New Jersey has done here: the 2014 Act effectively revises the licenses held by the state's casino and racetrack operators to allow them to take bets on sporting events as well as games of chance and horse races.

Appellants also argue that there is no violation of PASPA's licensing prohibition because the casino and horseracing licenses were issued to entities (casino and racetrack operators), while the 2014 Act applies to venues (the casinos and racetrack sites). *See* N.J. Br. at 44-45. But PASPA establishes a general bar on the licensing of "[sports] betting, gambling, or wagering scheme[s]"; that language does not draw any distinction between licensing entities and licensing venues.

Even if PASPA's licensing prohibition were understood to apply only to the licensing of entities, New Jersey law after the 2014 Act would still violate PASPA's licensing prohibition. As noted above, New Jersey law continues to prohibit persons other than a licensed casino or racetrack operator from conducting wagering on sporting events on the premises of casinos and racetracks unless the facility's licensed operator gives them permission to do so. *See* pp. 6-7 *supra*. That need for permission from a license holder is tantamount to a license requirement. Permitting other

parties to conduct a licensed activity with the permission (and only with the permission) of a license holder is no different from allowing the license holder to transfer or assign the license. A transfer or assignment of a license does not alter the licensed character of the activity. Thus, even under a more rigid reading of PASPA's licensing prohibition, New Jersey is still engaged in the licensing of sports gambling following the 2014 Act.

II. New Jersey Is Authorizing Sports Gambling By Law

As noted above, the district court held that the 2014 Law conflicts with another component of PASPA, the prohibition on "authoriz[ing] by law" sports gambling. In applying the statutory distinction between "authorizing by law," which is prohibited, and repealing existing prohibitions on sports gambling, which PASPA permits a state to do, the district court interpreted PASPA to present states with an all-or-nothing choice between leaving existing restrictions undisturbed and repealing them *in toto*. Because the 2014 Act effects only a limited repeal of the state's laws against sports gambling, the district court concluded that New Jersey was engaged in *pro tanto* authorization of the sports betting activities that are the subject of the repeal.

The United States does not believe that 28 U.S.C. § 3702(1) is properly construed to limit a state's alternatives in this fashion. In its opposition to the petitions for certiorari in *Christie I*, the United States advised the Supreme Court that New Jersey is "free [under PASPA] to repeal [its] prohibitions [on sports

gambling] in whole or in part." *Christie v. NCAA*, Nos. 13-967, 13-979 & 13-980, Br. for United States in Opp. 11 (May 2014) (available at http://www.justice.gov/sites/default/files/osg/briefs/2013/01/01/2013-0967.resp.pdf.) As indicated by that submission, we do not understand PASPA to draw a categorical distinction between complete and partial repeals. Instead PASPA prohibits six specific actions with respect to sports wagering: sponsoring, operating, advertising, promoting, licensing, or authorizing by law or compact. *See* 28 U.S.C. § 3702(1). As long as a state is not engaged in any of these activities, it may repeal in whole or in part its sports wagering prohibitions. The district court erred in thinking that anything short of a global repeal is *ipso facto* "authorization by law" of whatever falls within the scope of the repeal.[1]

It does not follow, however, that *every* partial repeal of a state's prior sports betting prohibitions will

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[1] The district court mistakenly read this Court's decision in *Christie I* to have held that PASPA presents states with an all-or-nothing choice between full preservation of existing anti-sports gambling laws and complete repeal. *See* Op. 18-20 (A18-A20). While certain language in the Court's opinion might be read as having contemplated a binary choice between maintaining sports wagering prohibitions in whole and repealing them completely, other language in the opinion points in the opposite direction, suggesting greater room for state policy choices. *See* 730 F.3d at 233 ("it is left up to each state to decide ... what the exact contours of the prohibition will be"); id. ("both choices leave much room for the states to make their own policy"). Given the lack of clarity on this point in the opinion, and given that the permissibility of partial repeals of sports gambling prohibitions was not actually before the Court in *Christie I*, the Court's decision cannot fairly be taken to have resolved that issue.

automatically satisfy PASPA, or that a state legislature is free to enact any laws that it wishes regarding sports gambling as long as it takes care to frame them as "partial repeals" of existing prohibitions. For example, if a state repeals its prohibitions on sports gambling only for chosen persons or entities, it may run afoul of PASPA's licensing prohibition, as New Jersey has done in this case. And other legislative efforts to encourage sports gambling may result in "authorization by law" even when cast in the form of a partial repeal. If the rule were otherwise, a state could circumvent the restrictions in 28 U.S.C. § 3702(1) at will simply by using the language of repeal to specify or leave intact only those sports gambling activities that it wishes to sponsor and promote.

In this case, the structure and scope of the 2014 Act suggest that New Jersey is engaged in precisely that: the authorization by law of sports gambling in the guise of repeal. Sports wagering is generally prohibited under the New Jersey Constitution and statutes. New Jersey has lifted those prohibitions for a small and preferred class of persons and venues–only casino and racetrack operators and those acting with their permission, and only in specified venues in Atlantic City and the state's racetracks. As the appellants argue, New Jersey regards this specific gambling activity as vital to the economic recovery of Atlantic City and the sustainability of the New Jersey equine industry. *See* NJ. Leg. Br., No. 14- 4546, at 9 ("Revitalization is especially critical now in Atlantic City, where the casino industry has experienced the worst year in its history, with four of the city's 12 casinos closing in 2014 and another rumored to close in 2015"); Horsemens' Br., No. 14-4569, at 3-7. Thus,

New Jersey has not chosen simply to withdraw existing restrictions on sports gambling; the 2014 Act seeks to encourage and promote specific sports gambling activities as an exercise in state economic development. By structuring an exception to New Jersey's general prohibition on sports wagering in this fashion, New Jersey has engaged in the affirmative authorization by law of the sports wagering covered by the 2014 Act.

We also note that, under the terms of the New Jersey Constitution, sports gambling is prohibited except insofar as it is "authorized by law" by the legislature. *See* N.J. Const. art. IV, § VII, ¶¶ 2(D), (F). Thus, the 2014 Act comes within the scope of the legislature's authority under the state Constitution only if it "authorizes by law" the sports gambling activities that it addresses. But if the 2014 Act *is* an "authorization by law" of sports wagering, then it violates PASPA, which prohibits "authorize[ing] by law" sports wagering. *See* 28 U.S.C. § 3702(1).[2] As a result, there appears to be no room for the 2014 Act to conform simultaneously to state and federal law.

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[2] There is no reason why the same language should be construed to have different meanings under PASPA and the state Constitution. Congress enacted PASPA in 1992, nearly twenty years before the 2011 amendment to the New Jersey Constitution regarding sports gambling. As a result, the drafters of the state constitutional amendment must be assumed to have been aware of the language of PASPA, including the "authorize by law" language in 28 U.S.C. § 3702(1). They were free to use different language, and if they had intended for the constitutional amendment to have a different meaning, presumably they would have done so.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be affirmed.

February 6, 2015

Respectfully Submitted,

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* * *

Nos. 14-4546, 14-4568, 14-4569

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, an unincorporated association; NATIONAL BASKETBALL ASSOCIATION, a joint venture; NATIONAL FOOTBALL LEAGUE, an unincorporated association; NATIONAL HOCKEY LEAGUE, an unincorporated association; OFFICE OF THE COMMISSIONER OF BASEBALL, an unincorporated association doing business as MAJOR LEAGUE BASEBALL;

Plaintiffs-Appellees,

v.

GOVERNOR OF THE STATE OF NEW JERSEY; DAVID L. REBUCK, Director of the New Jersey Division of Gaming Enforcement and Assistant Attorney General of the State of New Jersey; FRANK ZANZUCCKI, Executive Director of the New Jersey Racing Commission; NEW JERSEY THOROUGHBRED HORSEMEN'S ASSOCIATION, INC.; NEW JERSEY SPORTS & EXPOSITION AUTHORITY;

-and-

STEPHEN M. SWEENEY, President of the New Jersey Senate; VINCENT PRIETO, Speaker of the New Jersey General Assembly (Intervenors in District Court),

Defendants-Appellants.

On Appeal from the United States District Court for the District of New Jersey
No. 3:14-cv-06450-MAS-LHG

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February 13, 2015

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INTRODUCTION

This case involves the latest in a series of efforts by New Jersey to authorize sports gambling at its casinos and racetracks in violation of the Professional and Amateur Sports Protection Act ("PASPA"). After failing to convince this Court that New Jersey may simply ignore PASPA because it is unconstitutional, the sponsors of the invalidated 2012 Sports Wagering Law vowed that they would not be deterred in their efforts to bring sports gambling to New Jersey's casinos and racetracks. And they were not.

A mere three days after the Supreme Court declined to review this Court's decision holding that PASPA is constitutional, the New Jersey legislature passed a new law purporting to "repeal" the state's sports gambling prohibitions, but to do so *only* at casinos and racetracks—in other words, only at state-licensed gambling venues. The Governor vetoed that blatant attempt, as he put it, "to circumvent the Third Circuit's ruling" and "to sidestep federal law." But just two months later, the Governor saw things differently, and signed into law the 2014 Sports Wagering Law that is the subject of this lawsuit. Just like the legislation that the Governor vetoed mere months earlier, the 2014 Law purports to "partially repeal" New Jersey's sports gambling prohibition, but only as applied to sports gambling that occurs at a casino or racetrack, by individuals who are 21 or older, and on particular sporting events.

The 2014 Law is no more consistent with PASPA than the invalidated 2012 Law was. Just as before,

New Jersey has enacted a law that ensures that sports gambling will occur only under the conditions of the state's choosing. It has dictated where sports gambling may occur, by whom, and even which sporting events will be excluded. Worse still, New Jersey has dictated that sports gambling must be only at state-licensed gambling venues, thereby ensuring that the sports gambling it has authorized will occur only under the auspices of a state license. In a sea of prohibitions on sports (and other) gambling, New Jersey has dictated that sports (and other) gambling is permitted only at these islands of state-authorized gambling. No matter what New Jersey tries to label those actions, those cosmetic efforts cannot hide the reality that the 2014 law is yet another attempt to authorize state-licensed sports gambling in violation of PASPA.

Implicitly recognizing as much, the defendants devote most of their energy to trying to convince this Court that its decision rejecting their commandeering challenges to PASPA somehow entitles states to violate PASPA with impunity so long as they label their actions "repeals" rather than "authorizations." This Court's opinion does no such thing. In fact, this Court explicitly considered and explicitly *rejected* the very same argument that the defendants repeat anew here—namely, that if PASPA forces states to choose between prohibiting sports gambling entirely or not at all, then it unconstitutionally commandeers the states. The defendants' continued disagreement with the Court's conclusion does not entitle them to another bite at the constitutional apple.

At bottom, no amount of clever labeling or parsing of this Court's opinion can save the defendants from

the conclusion that the District Court correctly reached: Like the 2012 Law before it, the 2014 Law authorizes state-licensed sports gambling in violation of PASPA. The court therefore correctly enjoined the state defendants from giving the law any operation or effect.

STATEMENT OF ISSUES

Whether the District Court correctly concluded that New Jersey's attempt to "partially repeal" its otherwise-blanket sports gambling prohibitions solely at state-licensed gambling venues, and solely if those venues confine sports gambling to the persons and sporting events of the state's choosing, violates PASPA's prohibitions against authorizing or licensing sports gambling.

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SUMMARY OF ARGUMENT

This is a case of déjà vu all over again. Dissatisfied with Congress' decision to prohibit states from authorizing sports gambling, in 2012, New Jersey decided to simply ignore PASPA and press ahead with its plans to authorize sports gambling in its casinos and racetracks. Now, dissatisfied with this Court's conclusion that nothing in the Constitution allows it to violate PASPA, New Jersey has decided to ignore that decision and, once again, press ahead with its plans to authorize sports gambling in its casinos and racetracks. New Jersey's attempts to evade federal law fare no better this time around.

Notwithstanding the state's deliberate effort to style the 2014 Sports Wagering Law as a "repeal" rather than an "authorization," there is no escaping the reality that New Jersey has enacted a law that dictates where sports gambling may occur, by whom, and on what sporting events. The notion that this does not amount to an authorization of sports gambling on the state's chosen terms blinks reality. But for the 2014 Law, casinos, racetracks, and their patrons would remain subject to the same still-intact complete prohibitions on sports gambling as everyone else in New Jersey. Accordingly, their "right" to operate and engage in sports gambling derives not from the absence of any state law dictating otherwise, but from New Jersey's affirmative act giving them—and them alone—the opportunity of engaging in an activity denied to everyone else. The defendants cannot plausibly claim that these actions have not lent the state's imprimatur to the sports gambling that the 2014 Law authorizes.

And to make matters worse, New Jersey has made sports gambling legal *only* if it takes place at a state-licensed venue for state-authorized gambling. In other words, New Jersey has made obtaining a license or permit to operate a commercial gambling establishment a condition of operating sports gambling. Like its 2012 predecessor, the 2014 Law thus violates PASPA twice over: It not only authorizes sports gambling, but also ensures that it will take place only under the auspices of a state license—and a state license to operate a commercial, state-sanctioned gambling establishment, no less. That the 2014 Law achieves this end indirectly, rather than by establishing a distinct "sports gambling licensing regime" is no matter. Either way, the ultimate result is the same. Indeed, the

ultimate result is remarkably similar to the option Congress gave New Jersey for only one year to allow sports gambling only at state-licensed casinos. Having passed on that option in the early 1990s, New Jersey cannot seriously contend that PASPA allowed it to accomplish the same thing in 2014. That the 2014 Law *purports* not to authorize or license sports gambling is equally beside the point. It is the substance, not the form, of a state law that governs a preemption analysis, and the substance of the 2014 Law could not be clearer: The law authorizes state-licensed sports gambling in violation of PASPA.

The defendants' principal response to all this is to insist that this Court's decision in *Christie I* somehow entitles states to make any sports gambling policies they choose, so long as they do so under the guise of "repealing" existing sports gambling prohibitions, rather than expressly "authorizing," "licensing," or "regulating" the sports gambling that they permit. Even a cursory reading of this Court's decision confirms that it does no such thing. In fact, this Court explicitly *rejected* the notion that there is anything constitutionally problematic about reading PASPA to force states to choose between retaining complete bans on sports gambling or repealing those bans *in their entirety*. Although the Court acknowledged that this may be a difficult choice, it did not find the choice *unconstitutional*. Whether PASPA leaves states with other options is therefore beside the point, as neither PASPA nor this Court's opinion authorizes New Jersey to do what it has done here. The defendants' attempts to resist that conclusion are nothing more than attempts to relitigate a constitutional question that this Court already has resolved.

The defendants are no more successful in their efforts to attack the injunction the District Court ordered. The state defendants' Eleventh Amendment argument fails because it rests on the same faulty premise as their merits arguments—namely, that the 2014 Law does not authorize or license sports gambling. In fact, that is precisely what the 2014 Law does. And the state defendants are precisely the parties through which the law does so, as they bear direct responsibility for issuing the licenses under which the sports gambling that the law authorizes will occur. That makes them the right defendants in this case for the same reason that they were the right defendants in the last one, as they are the state officers whose actions are resulting in violations of PASPA.

The District Court also correctly concluded that the 2014 Law should be denied operation or effect in its entirety, rather than permitted to operate in some circumstances but not others or, worse still, converted into the complete *repeal* of New Jersey's sports gambling prohibitions that the legislature pointedly declined to adopt. If New Jersey wants to repeal its sports gambling prohibitions in their entirety, it remains free to do so—which is precisely why the defendants' commandeering arguments fare no better the second time around. But the defendants have no business asking this Court to force that decision upon the people of New Jersey under the guise of conducting a severability analysis.

ARGUMENT

I. The 2014 Sports Wagering Law Plainly Violates PASPA.

New Jersey's latest attempt to authorize sports gambling is just as unlawful as its invalidated attempt to do so through the 2012 Sports Wagering Law. There is no question that PASPA prohibits states from authorizing or licensing sports gambling, and there is now no question that PASPA's prohibitions are constitutional. There also is no question that the 2014 Sports Wagering Law violates them. Although styled as a "partial repeal," the law in fact authorizes sports gambling under the limited circumstances of the state's choosing, dictating where it may occur, by whom, and on what sporting events. Moreover, the law confines sports gambling to state-licensed gambling venues, thereby ensuring that it will occur only under the auspices of a state license. That the state has disclaimed any intent to regulate the sports gambling that the 2014 Law exempts from New Jersey's otherwise-blanket sports gambling prohibitions does not change the bottom line: Like the 2012 Law before it, the 2014 Law authorizes and licenses sports gambling in clear violation of PASPA.

A. The 2014 Sports Wagering Law Authorizes Sports Gambling in Violation of PASPA.

The defendants' defense of the 2014 Sports Wagering Law rests largely on the premise that the law does not authorize any sports gambling, but instead simply "repeals" existing prohibitions on sports gambling. That premise is demonstrably false. The 2014 Sports Wagering Law does not repeal any of New Jersey's myriad prohibitions on sports gambling. To the contrary, the state's criminal prohibitions on sports gambling remain intact. *See, e.g.*, N.J.S.A. §2c:37-2. So,

too, do all of its civil sports gambling prohibitions. *See, e.g.*, *id.* §2a:40-1. The 2014 Law instead just defines the limited circumstances under which the state will now treat sports gambling as legal notwithstanding those prohibitions—namely, when it occurs in places of the state's choosing (state-licensed casinos or racetracks), by persons of the state's choosing (casino or racetrack patrons who are 21 or older), and on sporting events of the state's choosing (those that do not involve college sports contests taking place in New Jersey or in which a New Jersey college team is participating).

The notion that this law does not "authorize" sports gambling defies reality. The state has not deregulated all sports gambling in New Jersey or taken an agnostic position on whether or how sports gambling will occur. Instead, the state has decided on the narrow conditions under which it approves of sports gambling, and then codified those conditions as an exception to its otherwise-blanket sports gambling prohibitions. New Jersey has maintained a state-wide prohibition on sports gambling with the exception of the islands of state-authorized gambling called casinos and racetracks, and even there dictates who can bet on what. That cannot rationally be understood as anything other than an effort to permit sports gambling "under the auspices of state approval and authorization," *Christie I*, 730 F.3d at 232—*i.e.*, under the very circumstances that PASPA prohibits.

That much is clear from the manner in which New Jersey's sports gambling scheme would operate were it permitted to take effect. It is not as if New Jersey has "*no law* in place governing sports wagering," such

that the "right" to offer or engage in sports gambling "derives ... from the inherent rights" "to do that which is not prohibited" by law. *Id.* New Jersey quite clearly continues to retain laws flatly prohibiting sports gambling. Accordingly, to the extent anyone now has a "right" to offer or engage in sports gambling in New Jersey, that "right" derives solely from the 2014 Law itself, which sets forth the conditions with which people or entities must comply to avail themselves of the exception to the state's sports gambling prohibitions. In other words, the 2014 Law affirmatively grants casinos, racetracks, and their 21-or-older patrons a legal "right" that New Jersey has denied everyone else in the state. That is the very definition of authorization. *See*, e.g., Merriam-Webster.com, http://www.merriam-webster.com/dictionary/authorize (defining "authorize" as "to give power or permission to," or "to give legal or official approval to").

That the state achieved this end by purporting to "repeal" its sports gambling prohibitions when its chosen conditions are satisfied rather than declaring that sports gambling "may occur" under such circumstances does not change that bottom line. After all, "'[t]he force of the Supremacy Clause is not so weak that it can be evaded by mere mention [or omission] of [a] word,' nor can it 'be evaded by formalism,' which would only 'provide a roadmap for States wishing to circumvent' federal law." JA29 (citation omitted) (quoting *Haywood*, 556 U.S. at 742 & n.9; *Howlett*, 496 U.S. at 382-83). Instead, it is the substance of a state law that governs the preemption analysis. *See, e.g.*, *Aetna Health Inc. v. Davila*, 542 U.S. 200, 214-15 (2004) (states may not "'elevate form over substance ... to evade'" federal preemption). And the substance

of the 2014 Law could not be clearer: The law authorizes sports gambling under the conditions of the state's choosing.[1]

That does not necessarily mean, as the defendants insist, *see* Sweeney Br.24-25, that there could never be a scenario in which a state prohibits some but not all forms of sports gambling without running afoul of PASPA. But the backdrop of how a state deals with sports gambling as a general matter must inform the analysis of whether efforts to address specific types of sports gambling are consistent with PASPA. Here, New Jersey has created a default rule that sports gambling is flatly impermissible, and then established only a limited set of conditions under which that default rule will no longer govern. Whether a different state with a different default rule could prohibit some but not all sports gambling without violating PASPA is therefore beside the point, as there is no escaping the conclusion that what New Jersey has done is given its imprimatur to certain forms of sports gambling.

The state has done so, moreover, on the heels of a law that sought to achieve the same basic end through an unambiguous authorization of sports gambling that the state itself acknowledged violated a federal statute. *Cf. Gilmore v. City of Montgomery, Ala.*, 417

[1] That conclusion also is consistent with the New Jersey Constitution, which commands that all forms of gambling conducted in a casino "shall be determined by or pursuant to the terms of [a] law authorizing the establishment and operation thereof." N.J. Const. art. IV, §VII, ¶2D; *see also In re Casino Licensees*, 633 A.2d at 1052. Accordingly, as a matter of state constitutional law, the legislature is powerless to permit any form of gambling in casinos that is not specifically authorized by law.

U.S. 556, 566-67 (1974) (recognizing that prior efforts to evade federal law can inform interpretation of what appear to be subsequent efforts to do the same). And, as the coup de grâce, the state has done so in a way that ensures that sports gambling will occur only in state-licensed gambling venues, a subset of which were the express subject of a one-year-only option for New Jersey to allow limited sports gambling without violating PASPA. *See* Part I.B *infra*. Whatever else a state may do without violating PASPA, it most certainly may not do that.

The defendants' contrary arguments rest on the mistaken assumption that there is no meaningful distinction between withdrawing prohibitions on *all* sports gambling and withdrawing prohibitions on *some* sports gambling. *See* NJ Br.34. But the difference between the two is self-evident. In the former situation, a state is disclaiming any role in determining whether or to what extent sports gambling is appropriate. There is no de facto authorization of some sports gambling. But in the latter, a state is labeling some sports gambling a societal evil and other sports gambling a societal good. That is precisely the kind of "'label of legitimacy'" that the defendants themselves concede PASPA prevents states from attaching to sports gambling. NJ Br.33 (*quoting Christie I*, 730 F.3d at 237). In short, New Jersey may not carefully calibrate its sports gambling prohibitions to allow only the limited forms of sports gambling that it prefers, then turn around and disclaim any intent to authorize or approve of that sports gambling. Nor may it avoid a preemption problem through the simple expedient of declaring that it "does not intend for the Act to do anything that PASPA prohibits." Sweeney Br.7.

In all events, the intention behind the state's actions is hardly a mystery. New Jersey has made no secret of the fact that it affirmatively welcomes sports gambling in its casinos and racetracks. Indeed, far from disclaiming any intent to lend a label of legitimacy to the sports gambling the legislature authorized, Senate President Stephen Sweeney has celebrated all the ways that sports gambling purportedly will inure to the state's benefit, including by providing "a windfall for New Jersey taxpayers and help[ing] stabilize a gaming industry that is critical to the state's economy." John Brennan, *UPDATED: Reactions to the NJ sports betting ruling*, NorthJersey.com (Nov. 21, 2014), http://perma.cc/bj96-zmkq. Those are hardly the words of a legislature that "does not intend for any entity to perceive" of its actions as an "approval or authorization" of sports gambling. NJ Br.35.

B. The 2014 Sports Wagering Law Licenses Sports Gambling in Violation of PASPA.

That the state's chosen conditions for approving of sports gambling include confining it to casinos and racetracks makes the violation of PASPA all the more blatant. By law, a casino cannot "operat[e]" in Atlantic City "unless and until a valid operation certificate has been issued" to it by the Division of Gaming Enforcement (DGE). N.J.S.A. §5:12-96. Likewise, a racetrack cannot offer gambling unless and until it is "granted a permit" by the New Jersey Racing Commission (NJRC). *Id.* §5:5-50. And casino and racetrack operators must satisfy countless conditions to obtain and retain the state's permission to operate these commercial gambling establishments. *See generally* N.J.A.C. §§13:69—13:74B.

For example, an applicant for a casino license must submit to a criminal history background check and provide documentation and assurances of financial stability and personal integrity. *See* N.J.S.A. §5:12-84; N.J.A.C. §§13:69C-4.2, 13:69C-5.3. A corporation must be incorporated in New Jersey to apply for such a license, *see* N.J.S.A. §5:12-82(d), and must provide a slew of information about itself, including personal employment and criminal histories of all corporate officers, directors, and other employees; all holding, intermediary, and subsidiaries companies; the terms and structure of any authorized securities issued by the corporation; the terms and conditions on all outstanding loans and debts; equity holdings of all officers, directors, and underwriters; a description of all bonus and profit-sharing arrangements; and copies of all management and service contracts. *See, e.g.*, N.J.S.A. §5:12-85; N.J.A.C. §§13:69C-2.3, 13:69C-2.4, 13:69C-4.3.

And layered on top of these extensive qualification requirements are intricate regulations of the casinos themselves, which cover everything from the size of the facility, who may enter, how alcohol may be sold, what entertainment may be offered, and what security must be employed. *See, e.g.*, N.J.A.C. §§13:69G-1.3 (requiring casinos to exclude "[a]ny person who has been convicted of a criminal offense under the laws of any state, or of the United States, which is punishable by more than six months of incarceration, or who has been convicted of any crime or offense involving moral turpitude, and whose presence in a licensed casino establishment would be inimical to the interest of the State of New Jersey or of licensed gaming therein"), 13:69G-1.7, 13:69C-6.4, 13:69C-

7.1(b)(2), 13:69C-7.3, 13:69C-15.1, 13:69I-1.3; N.J.S.A. §§5:12-98 (requiring each casino hotel to have "[a] closed circuit television system according to specifications approved" by DGE, "with access on the licensed premises to the system"), 5:12-103.

As these myriad restrictions and requirements confirm, it is no accident that New Jersey has "repealed" its sports gambling prohibitions only at state-licensed casinos and racetracks. By imposing that limitation, New Jersey has ensured that any sports gambling occurring within its borders will be overseen by entities that the state has deemed qualified to operate commercial gambling establishments, and only in facilities designed and operated according to the state's specifications. In doing so, New Jersey not only has "authorize[d]" sports gambling, but has "license[d]" it as well. 28 U.S.C. §3702(1); *see also* U.S. Br.11-12 ("By confining the operation of the 2014 Act to facilities that are operated pursuant to gambling licenses, New Jersey is engaged in licensing under the guise of repeal.").[2]

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[2] To the extent the defendants continue to argue that the 2014 Law allows sports gambling to be conducted at the site of the former Garden State Park racetrack without a gambling license or permit, *see* Sweeney Br.5-6 n.5, that argument is meritless. As the defendants themselves have acknowledged, various legislative and other efforts have been made to authorize the establishment of an off-track betting parlor at that location. Leagues Reply 4 n.2 (ECF #49). It is clear that the 2014 Law is intended to authorize sports gambling at this location *only* if those efforts to convert it into an off-track betting establishment are successful. Of course, off-track betting is subject to its own detailed licensing regime. *See* N.J.S.A. §§5:5-127–5:5-160.

Implicitly recognizing this problem, the defendants emphasize that the 2014 Law disclaims any intent to "license" sports gambling and "has no licensing scheme" of its own. *See* NJ Br.32; N.J.S.A. §5:12A-8. But that ignores the obvious reality that it is the existence of the licensing regime for casinos and racetracks that obviates the need for a separate licensing regime for sports gambling. In a state without licensed casinos and racetracks, a state would need to create a licensing system from scratch. New Jersey's ability to piggyback on an existing licensing regime for casinos and racetracks does not exempt New Jersey from PASPA. If there were any doubt on that score, it would be removed by the one-year-only option Congress extended to New Jersey. Congress specifically adverted to the reality that New Jersey had authorized gambling "conducted exclusively at casinos" that already were subject "to a comprehensive system of State regulation." 28 U.S.C. §3704(a)(3). But Congress did not give New Jersey a permanent option to piggyback onto that pre-existing licensing scheme; it instead gave New Jersey only a one-year window that closed decades ago.

The state defendants protest that not every activity that occurs at a business with a state license necessarily occurs "under the auspices of" that license. *See* NJ Br.44. That may be so in many instances, but it is decidedly not the case when, as here, the state dictates that an activity may be carried out *only* at a business that operates with such a license. The state defendants' veterinarian services example is illustrative. *See* NJ Br.43-44. To be sure, if the state allowed anyone and everyone to offer pet-boarding services, then a veterinarian who was licensed to administer

medicine and also offered pet-boarding services would not be offering the latter "under the auspices of" its license to do the former. So, too, if (as New Jersey apparently does) a state required separate licenses for each service and a veterinarian acquired one of each. But if the state enacted a law allowing pet-boarding services to be offered *only* by veterinarians who are licensed to administer medicine, then such a veterinarian most certainly would be offering pet-boarding services under the auspices of its license to administer medicine; but for the license to offer the latter, the veterinarian could not offer the former.

In short, there is no meaningful difference between licensing an entity to offer sports gambling, and licensing an entity to offer gambling generally and then enacting a law that permits only those licensees to offer sports gambling. Either way, New Jersey has made obtaining a license or permit from the state a condition of offering sports gambling, and thus has authorized sports gambling "under the auspices of a state license." *Christie I*, 730 F.3d at 236. The state defendants' insistence (at 44) that there is "no logical stopping point" to "this reasoning" is fundamentally flawed, as there is nothing "illusory" about the distinction between allowing sports gambling to be carried out *anywhere* (including at businesses that operate with some form of license) and allowing sports gambling to be carried out *only* at places that have a commercial gambling license. New Jersey cannot elide the obvious difference between the two by disingenuously declaring that the 2014 Law is "not intended" and "shall not be construed" to do what it plainly does, N.J.S.A. §5:12A-8—particularly when those declarations are a transparent attempt to evade federal law.

C. New Jersey's Attempts to Reconcile the 2014 Sports Wagering Law With PASPA Are Unavailing.

The defendants alternatively protest that New Jersey's actions are consistent with PASPA because the state is not "regulat[ing]" the sports gambling that the 2014 Law authorizes under the auspices of a state license. NJ Br.35-36, 40-42; *see also* Sweeney Br.7-8. At the outset, whether the 2014 Law "regulates" the sports gambling that it authorizes and licenses is largely beside the point, as PASPA does not confine its prohibitions to "state-*regulated*" sports gambling. It instead makes it unlawful for a state "to sponsor, operate, advertise, promote, license, or authorize by law" sports gambling. 28 U.S.C. §3702. The degree of oversight a state chooses to exercise over the sports gambling that it authorizes or licenses is therefore irrelevant. What Congress sought to prevent was the "lending" of the state's "imprimatur to gambling on sports." *Christie I*, 730 F.3d at 240. As Congress recognized in crafting PASPA's prohibitions, a state does not cease to lend that imprimatur just because it decides not to otherwise regulate the sports gambling that it authorizes or licenses.

In any event, the suggestion that the 2014 Law "is an absolute forfeiture of regulatory authority" over sports gambling is defeated by the law itself. NJ Br.40. The law exercises regulatory authority over sports gambling in the most basic way possible: by dictating where it may take place, by whom it may take

place, and on what sporting events it may take place.[3] To call that "unregulated" sports gambling is akin to calling sales of beer "unregulated" so long as they are made only by liquor stores that are licensed to sell alcohol, only to customers who are 21 or older, and only in bottles not cans. That a state did not take the additional steps of dictating the size of a liquor store or the prices it may charge, *see* NJ Br.41-42, would not negate the regulatory oversight that the state *did* choose to exercise.

The incompatibility of New Jersey's actions and PASPA is underscored by the statute's one-year-only window for New Jersey. As section 3704(a)(3)(B) makes crystal clear, Congress specifically recognized that the "comprehensive system of State regulation" that governed "commercial casino[s]" that operate in Atlantic City would allow New Jersey to permit sports gambling at those casinos more readily than other states without comparable venues for state-licensed and state-authorized gambling. Congress expressly contemplated the possibility of New Jersey allowing sports gambling at those venues—and those venues alone. And Congress' judgment was not that sports gambling at state-licensed casinos was consistent with the prohibitions of PASPA. To the contrary, Congress gave New Jersey a one-year window to pass legislation that would qualify for an exception to PASPA.

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[3] Moreover, the state appears to continue to assert authority to regulate sports gambling in other ways, including by enforcing unspecified "generally applicable" laws and collecting taxes on sports gambling revenues. See, *e.g.*, NJ Br.44-45; NJ Mem. in Opp. 17 n.4 (ECF #44).

Having declined that option in 1993, New Jersey cannot achieve the same reality 20 years later by relaxing its state-wide prohibition only at state-licensed casinos and racetracks.

In the end, there is no escaping the conclusion that New Jersey has, once again, authorized licensed sports gambling in violation of PASPA. Indeed, New Jersey's own legislators have readily conceded that the 2014 Law is yet another attempt to "implement well regulated sports gaming" in New Jersey. JA434. As they explained, the goal of the law is to give state-licensed gambling venues "a shot in the arm"—*i.e.*, "to do something for the gaming business in the state of New Jersey." JA91; *see also, e.g.*, JA124-25. Whatever the merits of that goal as a policy matter, New Jersey may not seek to achieve it by authorizing and licensing sports gambling in violation of PASPA.

II. New Jersey's Appeals To Commandeering Principles Rehash Arguments This Court Already Rejected.

Implicitly recognizing that the 2014 Sports Wagering Law cannot seriously be understood as anything other than an effort to authorize licensed sports gambling, the defendants devote the bulk of their briefs to attempting to relitigate constitutional issues that this Court already resolved. In their view, unless PASPA allows states to "partially repeal" their gambling prohibitions in this manner, thereby achieving sports gambling only at the places, by the persons, and on the sporting events of their choosing, the statute unconstitutionally compels states "to maintain existing laws." NJ Br.30; *see also* Sweeney Br.13.

That argument fails for the same reason that this Court rejected it the last time the *Christie I* defendants made it: PASPA simply does not require New Jersey to keep any of its existing laws on the books. *See Christie I*, 730 F.3d at 232 ("We do not read PASPA to prohibit New Jersey from repealing its ban on sports wagering."). If New Jersey wants to repeal its sports gambling prohibitions entirely, it remains just as free to do so now as it was when this Court considered the question two years ago. That New Jersey would prefer to have some middle path whereby it may "partially repeal" those prohibitions only to the extent that they would prohibit sports gambling that it affirmatively welcomes does not mean that *PASPA* (or the District Court's injunction, *see* NJ Br.30) has forced New Jersey to "maintain" its "existing laws." Instead, sports gambling remains prohibited in New Jersey after the invalidation of the 2014 Law because New Jersey remains unwilling to accept the option Congress has given it of repealing its sports gambling prohibitions in their entirety.

Contrary to the defendants' suggestions, there is nothing at all anomalous about the fact that the "partial repeal" option New Jersey seeks to exercise here is off the table. That kind of limitation on a state's options is a natural consequence of countless preemption schemes. For instance, a state does not have the option of "partially repealing" federal standards that it has agreed to adopt and enforce on the federal government's behalf. *See, e.g.*, *Hodel v. Va. Surface Mining & Reclamation Ass'n*, 452 U.S. 264 (1981). But that does not mean that a state is being "forced" to keep those standards on its books, as the state always retains the option of repealing them *in their entirety*

and ceding to the federal government the power to enforce its own policies. That a state must choose between retaining federal standards in their entirety or not at all does not mean that it has no choice. Here, too, if it is more important to New Jersey to legalize sports gambling in its casinos and racetracks than to prohibit it everywhere else, then New Jersey is free to eliminate its sports gambling prohibitions in their entirety. That New Jersey does not like that option does not change the reality that its blanket sports gambling prohibitions remain in force because *New Jersey* has decided to continue to retain them.

The defendants alternatively protest that, if PASPA forces states to choose between complete prohibition and complete repeal, it is unconstitutional. *See* NJ Br.29. If that argument sounds familiar, that is because it tracks nearly verbatim the argument the *Christie I* defendants made last time they tried to convince this Court that PASPA is unconstitutional. *See, e.g.*, *Christie I*, NJ Br.51 ("Giving a State a choice between prohibiting sports wagering or allowing wagering to take place without *any* controls at all does not cure the commandeering defect because the latter alternative is manifestly unacceptable and thus presents no 'choice' at all."); *id.* at 52 ("Congress cannot avoid the anti-commandeering limitation simply by giving a State a 'choice' between implementing Congress's preferred regulatory scheme and courting limited anarchy."); *Christie I*, NJ Reply Br.19 ("reading ... PASPA ... [to] put States to the choice of either prohibiting private sports wagering schemes altogether or permitting them in an utterly unfettered environment" would "circumvent the prohibition on 'requiring

the States in their sovereign capacity to regulate their own citizens'").

Of course, this Court emphatically *rejected* that argument in the course of rejecting the *Christie I* defendants' contention that PASPA runs afoul of the commandeering doctrine. As the Court explained, "to the extent we entertain the notion that PASPA's straightforward *prohibition* on action may be recast as presenting two *options*, these options" create no constitutional problem, as they are "quite unlike" the kinds of "coercive choices" that have been held to constitute commandeering. 730 F.3d at 233 (emphasis in original). The "two options" the Court identified in reaching that conclusion were the same two options New Jersey still has now: (1) "a state may repeal its sports wagering ban," or (2) "a state may choose to keep a complete ban on sports gambling." *Id.* Whether PASPA does in fact put states to that binary choice is therefore irrelevant from a constitutional standpoint, as this Court unambiguously concluded that the statute need not be construed to offer states anything more in order to avoid a commandeering problem.

The defendants nonetheless insist that this Court's opinion somehow entitles New Jersey to a third option under which it may permit the sports gambling that it does like while still prohibiting the sports gambling that it does not like. The opinion itself is answer enough to that. The "exact contours" language on which the defendants rely so heavily in making that argument comes in a sentence identifying what a state may do if it "choose[s] to keep a *complete ban* on sports gambling." *Id.* (emphasis added). In that situation, the court observed, "it is left up to each state to

decide how much of a law enforcement priority it wants to make of sports gambling, or what the exact contours of the prohibition will be." *Id.*

The defendants cannot plausibly convert a description of what a state may do if it *keeps* a "complete ban" into an entitlement to keep something *less* than a "complete ban." Instead, what the Court plainly was contemplating in that passage were changes to the "exact contours" of a state's scheme for *enforcing* its complete ban—*i.e.*, whether it will be enforced civilly or criminally, what penalties will attach, and so on. That much is clear from the fact that the "exact contours" language is preceded immediately by a reference to "how much of a law enforcement priority [the state] wants to make of sports gambling" if it maintains its complete ban. *Id.* It is also clear from the dissent's characterization of the majority's opinion as finding no constitutional problem with reading PASPA to "essentially give[] the states the choice of allowing totally unregulated betting on sporting events or prohibiting all such gambling." *Id.* at 241 (Vanaskie, J., concurring in part and dissenting in part).

Indeed, in attempting to convince the *en banc* Court and the Supreme Court to reconsider the panel's decision, the defendants themselves acknowledged repeatedly that this Court did not premise its rejection of their commandeering argument on the existence of any "option three." For instance, in their *en banc* petition, the state officers in *Christie I* complained that the panel erred by holding that no constitutional problem results from interpreting PASPA to "command[] States to address sports wagering within

their borders according to only one of *two* congressionally approved options: 'a state may choose to keep a *complete* ban on sports gambling' or it 'may repeal its sports wagering ban' but without a system of licensing to regulate the resulting market." *Christie I*, NJ Rehearing Pet.2 (emphasis added). Likewise, in their petition for certiorari, the state officers complained that this Court erred by holding that there is nothing unconstitutional about reading PASPA as forcing a state to choose whether "to *entirely* 'repeal[] its ban'" on sports gambling. NJ Cert. Pet.15 (emphasis added).

The defendants nonetheless protest that, without the third option they now attempt to squeeze out of this Court's opinion, states would no longer have "much room ... to make their own policy" with respect to sports gambling. *Christie I*, 730 F.3d at 233. To be sure, that is the argument that the *dissent* advanced in *Christie I*. *See id.* at 250 n.9 (Vanaskie, J., concurring in part and dissenting in part) ("I fail to discern the 'room' that is accorded the states to make their own policy on sports wagering" if "the only choice is to allow for completely unregulated sports wagering ... or to ban sports wagering completely."). But it is an argument that the majority expressly *rejected*. As the majority explained, "that these are not easy choices ... does not mean that [states] were given no choice at all, or that the choices are otherwise unconstitutional." *Id.* at 233. The Court would hardly have needed to emphasize the difficulty of the choice states may face under PASPA had its constitutional analysis assumed that New Jersey remained entitled to retain complete control over the extent to which legalized sports gambling is permitted within its borders, so long as it does

so under the guise of "partially repealing" existing prohibitions.

The defendants fare no better with their reliance on this Court's rejection of the "'false equivalence' between a repeal and an authorization," *id.* *See, e.g.*, NJ Br.22; Sweeney Br.13-14. To be sure, the Court rejected the *Christie I* defendants' argument that there is *never* a meaningful difference between a "repeal" and an "authorization." *See Christie I*, 730 F.3d at 232 (rejecting argument that "PASPA precludes repealing prohibitions on gambling just as it bars affirmatively licensing it"). But the Court in no way suggested that "states retain the freedom to repeal *any* of their laws that they wish to repeal" without running afoul of PASPA. Sweeney Br.23 (emphasis added).[4] Nor did the Court ever suggest that simply labeling a law a "repeal" would obviate the need to examine whether it is in fact an attempt to authorize or license sports gambling. *See* Sweeney Br.19-24. As the state itself concedes, "*Christie I* does not create a magic words test." NJ Br.45 n.4.

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[4] Nor did the United States in its brief in opposition to the *Christie I* defendants' petitions for certiorari. Although that brief noted that "New Jersey is free to repeal [state-law] prohibitions *in whole or in part*," U.S. BIO 11, *Christie*, 134 S. Ct. 2866 (2014) (emphasis added), the United States has since made clear that it never intended to suggest "that *every* partial repeal of a state's prior sports betting prohibitions will automatically satisfy PASPA, or that a state legislature is free to enact any laws that it wishes regarding sports gambling as long as it takes care to frame them as 'partial repeals' of existing prohibitions." U.S. Br.14. And what kinds of partial repeals might satisfy PASPA is a question the Court need not answer in this case, as this partial repeal most certainly does not. *See id.* at 9; *supra* Part I.A.

Finally, there is no more merit to the suggestion that PASPA sanctions every state scheme that purports to leave legalized sports gambling "unregulated." The Court certainly recognized that "*complete* deregulation" of sports gambling is consistent with PASPA. *Christie I*, 730 F.3d at 235 (emphasis added). But, as noted, *see* Part I.A *supra*, there is an obvious difference between *completely* deregulating sports gambling, and dictating where, how, and by whom it may take place but then declining to exercise further regulatory authority. Nothing in this Court's opinion suggests that it failed to grasp the basic distinction between the two.

At bottom, the defendants' commandeering arguments are nothing more than an ill-conceived effort to relitigate a constitutional question that this Court already resolved. Worse still, those arguments continue to rest on the very same flawed reading of PASPA as compelling states "to maintain existing laws," NJ Br.30, that this Court already so thoroughly rejected. The defendants' continued disagreement with this Court's resolution of those arguments does not entitle them to a second bite at the constitutional apple.

* * *

CONCLUSION

For the foregoing reasons, the judgment of the district court should be affirmed.

Respectfully submitted,

s/Paul D. Clement

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(ORDER LIST: 582 U.S.)

TUESDAY, JUNE 27, 2017

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CERTIORARI GRANTED

15-1439 CYAN, INC., ET AL. V. BEAVER CTY. EMPLOYEES, ET AL.

The petition for a writ of certiorari is granted.

16-476 CHRISTIE, GOV. OF NJ, ET AL. V. NCAA, ET AL.

16-477 NJ THOROUGHBRED HORSEMEN V. NCAA, ET AL.

The petitions for writs of certiorari are granted. The cases are consolidated and a total of one hour is allotted for oral argument.

16-492 PEM ENTITIES LLC V. LEVIN, ERIC M., ET AL.

The petition for a writ of certiorari is granted.

16-534 RUBIN, JENNY, ET AL. V. IRAN, ET AL.

The petition for a writ of certiorari is granted limited to Question 1 presented by the petition. Justice Kagan

took no part in the consideration or decision of this petition.

16-1144 MARINELLO, CARL J. V. UNITED STATES

The petition for a writ of certiorari is granted.

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